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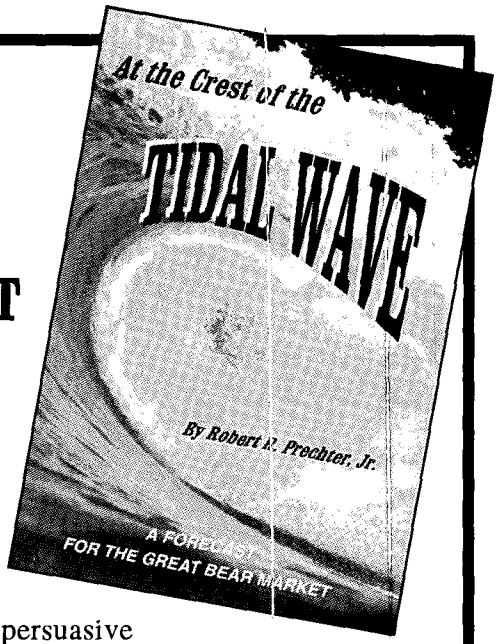

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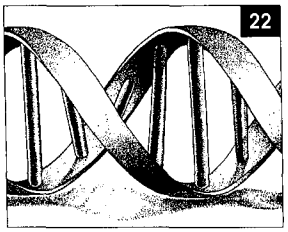

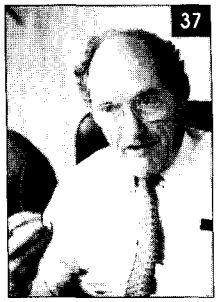

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Honest Admission

By Virginia I. Postrel

Even Progressive planners knew some migration defies regulation.

CALIFORNIA GOV. PETE Wilson officially declared his presidential candidacy with the Statue of Liberty in the background, then he hopped a ferry for Ellis Island. He talked about his Irish grandmother, Kate Barton Callahan, and how she'd cleaned hotel rooms to support her daughter after her husband, a Chicago cop, was killed in the line of duty.

"Like millions of Americans, she toiled and sacrificed in the hope that her child, and her child's children, would have better lives. We have. I have been privileged to live the American Dream," he said.

By tying his 1994 reelection campaign to Proposition 187, Wilson became a symbol of anti-immigrant sentiment. But he's now a moderate in an increasingly immoderate debate. As Congress seriously considers slashing legal immigration levels by at least a third and Pat Buchanan routinely refers to immigration as "invasion," Wilson continues to draw the legal-illegal distinction sharply: "There's a right way to come to America and a wrong way," he said in New York, echoing his gubernatorial commercials. "Illegal immigration is not the American way."

A lot of elected officials are desperately trying to maintain the same distinction, lauding legal immigrants as good and illegal immigrants as evil, conferring on legal entry the sanction not merely of law but of history and tradition while denouncing illegal border crossing as tantamount to an attack on the United States. In a climate in which saying anything good about any post-1965 immigrant—especially any nonwhite post-1965 immigrant—generates hate mail, declaring legal immigration the "right way" borders on bravery.

But history is not as simple, nor immigration law as just, as Wilson suggests. Before accepting a crackdown that restricts the liberties of all Americans, both voters and political officials could use an immigration refresher course.

The fundamental fact of immigration control is that it defies human nature and market forces. It draws a line between willing buyers and willing sellers and enforces that line with guns. It tells workers they must stay where there is no work, seekers of liberty they must endure dictatorship, parents they cannot seek a better life for their children. It is like wage and price controls, taxi medallions, vice laws, rent control, and every other attempt to interpose state power between consenting adults. It creates black markets, corrupts law enforcement, encourages contempt for the law, and, at best, works only imperfectly.

Contrary to the suggestions of anti-immigration polemicists, free migration is not a diabolical plot by elites but the natural state of the world. Closed, or even partially closed, borders are the compromise. It is their advocates who bear the burden of justifying an inherently arbitrary policy.

And U.S. immigration policy is nothing if not arbitrary. On that both pro- and anti-immigrant forces can agree.

Current policy favors family members of citizens and legal residents; if you're from the wrong family, you'll never cross the border legally, no matter how much you believe in the American way. Unless, that is, you happen to have special skills or advanced degrees. Or you get lucky in the "diversity" lottery that gives out 40,000 green cards a year to people from countries that otherwise send few legal immigrants (with 40 percent reserved for the Irish). Or you're the Amerasian child of a U.S. serviceman. Or you have big bucks to invest. If you have a "well-founded fear of persecution," you can get refugee status, but chances are you'll first have to cross the border illegally, or come in as a tourist or student.

IN OTHER WORDS, ELLIS ISLAND IS A HISTORICAL monument, not a symbol of today's legal immigration. "The American way" has become a lot more bureaucratic since Katie Barton's day.

Back then, any able-bodied non-Chinese adult—after 1917, any able-bodied non-Chinese adult who could read at least one language—could come to America. The Progressives ended that form of near laissez-faire, as they ended so many others—and on similar grounds. State planners, they argued, knew best how to engineer American social development. Federal regulation, not individual choices, should determine the country's ethnic and cultural makeup.

"In political life, liberty meant until recently the minimum of control necessary to secure equal opportunity," proclaimed

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Progressive social worker and anti-immigration campaigner Joseph Lee. "We have begun to realize the control of man over nature, and to see that the highest results come from the collective effort consciously directed to an end....These considerations have a direct bearing upon the question of immigration regulation."

Backed by a State Department report warning that an unprecedented number of "filthy" and "unassimilable" Jews were fleeing persecution in Europe, and by other "scientific" findings, Congress passed a temporary quota act in 1921 and a permanent one in 1924. It translated into law the notion, articulated by influential Cornell economist Jeremiah Jenks, that immigration policy should shift from "an individualistic basis" to one based on "racial characteristics."

Rather than looking at each immigrant to make sure he or she posed no threat to public health and wasn't likely to become a public charge, the United States would lump immigrants together by ethnic group, deeming some collectives worthy and others not. "Most of us are proud of being Anglo Saxons," said Jenks, suggesting that British immigrants "must be particularly good." (The same collectivist impulse exists today; anti-immigrant campaigners love to cite statistics showing that this ethnic group is more likely to go on welfare, or have fewer years of schooling, or earn less, or have lower IQs than that one, especially if the latter group is Northern European. And wildly atypical cases, particularly the Hmong, are used to stand for entire continents of origin.)

EVEN IN THE NATIVIST 1920s, HOWEVER, the United States did not close its Southern border. Until 1965, there was no numerical limit on immigration from the Western Hemisphere.

Yes, you read that correctly.

The Progressives were worried about Jews, Poles, and Italians, not the century-old flow of Mexican workers to and from the Southwestern states. And there was a logic to their priorities. Arbitrary lines are even more arbitrary when they divide historically, geographically, and economically connected people. Saying someone can't commute from Juárez to El Paso is a lot stranger than saying someone can't migrate from Vilna to New York—and enforcing the former prohibition takes a lot more firepower.

So until 30 years ago, any able-bodied Mexican worker who could pay a head tax and visa fee and pass a Spanish literacy test could legally come to the United States. Some still came illegally—not everyone had the money or reading skills—but the border was essentially open. ("Undocumented workers" in those days were potentially legal migrants who just hadn't paid the fees to get proper papers.) Ellis Island lived on in the Southwest.

When Pete Wilson draws a contrast between his by-the-book Irish grandmother and bad Mexicans running across Interstate 5, he is playing on a common ignorance of history. He's suggesting that today's illegal immigrants have the same legal options as Katie Barton but willfully flout the law. And he's hiding the history of the U.S.-Mexico border. America's Southern border has never been more closed to immigrants, legal and illegal, than it is today.

Politicians and activists who demand that we hermetically seal the borders—especially those who demand that we simultaneously impose a moratorium on legal immigration—are being both grandiose and dishonest. They are imagining that they can muster the pure force needed to completely restrain the free flow of labor, and they are pretending that such force will have little or no effect on the average American's life. Nothing could be further from the truth.

The great political task of the next few decades will be to reverse Progressivism rather than, in a new era of economic and social change, to repeat its errors. And that task is not just about antitrust law or land-use regulation or even welfare reform. It is about saying no to Jeremiah Jenks and his intellectual descendants, about refusing to centrally plan America's ethnic composition, about treating Ellis Island not as a backdrop for photo ops but as a model for policy.

Chip Off the Block

By Nick Gillespie

V-Chip legislation is doubly awful.

LET'S HEAR IT FOR THE "V-CHIP"—a small device that viewers can use to block unwanted television programs from reaching the screen. Most government "solutions" tend to fail because they are either flawed in theory or botched in practice. But the V-Chip is a rare instance of government efficiency: It is both repellent as a concept and doomed to real-world failure.

And, like so much misguided legislation, it's not going away. As part of telecommunications reform, both the House and the Senate passed V-Chip legislation by wide margins; there is little doubt that the V-Chip will be part of the final bill presented to President Clinton, who has declared his unwavering support.

House and Senate versions of the bill would make it mandatory for all new TV sets 13 inches or larger to have V-Chip circuitry installed—raising the price of a set by as much as $50. Parents, say legislators, could then program the chip to block out unwanted cable and broadcast programs based on a ratings system yet to be developed. The ratings system, which is technically only recommended by the pending legislation, would address issues of violence, sex, and language.

The V-Chip is repulsive on moral grounds. Its proponents often refer to it as the "choice chip," even as it strips consumers of a very basic option: not to buy a TV without a V-Chip. In an unironic homage to George Orwell, one of the House co-sponsors, Rep. Edward Markey (D-Mass.), told the press, "People think this is Big Brother. It's not. It's Big Father and Big Mother."

Markey and his like-minded colleagues seem not to realize that it isn't the familial relationship in Orwell's phrase that bothers people—it's the "Big," the removal of individuals from the decision-making process.

Although V-Chip boosters dismiss charges of censorship, there's no question that the legislation is intended to use governmental muscle to change what people watch. "You know what," Markey told the *Los Angeles Times*, "this does have the potential of changing the economics of producing programming." "If advertisers know that a good chunk of the market might tune out programming because it has objectionable content, you might see better programming being produced," said Sen. Kent Conrad (D-N.D.), the sponsor of the Senate bill. Of course, Conrad's idea is equally true in a V-Chipless world.

THE PRACTICAL MATTERS SURROUNDING the V-Chip are just as muddled:

• TV manufacturers estimate that it would be decades before every set in use in the country had a V-Chip in it—not counting sets smaller than 13 inches. Of course, if parents are that concerned, there are already about 20 models of TV sets or control devices currently on the market that let viewers screen out particular programs, channels, and time slots.

• Any ratings system for television would be virtually impossible to maintain. The Motion Picture Association of America, the organization that rates movies, handles between 200 and 400 films annually, roughly 600 hours of material.

By comparison, a single 24-hour-a-day broadcast channel airs almost 9,000 hours of programming a year. Even assuming that reruns make up half of that total, that's still about 4,500 hours per channel. Ratings proponents say that news programs should be exempt, even though such fare often contains many of the most violent and disturbing images displayed on TV. What's more, it's not clear what would qualify as news: *60 Minutes? Court TV? Hard Copy?* All could make a good case—and all broadcast more than their share of violence, sex, and adult language.

• And what *about* reruns? "You can't expose kids to 100,000 acts of violence and 8,000 murders by the time they're 12 and not expect it to have an effect," says Conrad. If the problem is violence per se, then old shows must be blocked as well as current ones. And that doesn't just mean shows like *The Untouchables*, either. Virtually every episode of the golden-age favorite *The Honeymooners*, for example, includes explicit references to spousal abuse ("One of these days, Alice—pow! Right in the kisser!"). Add reruns into the mix—as the logic of V-Chip legislation demands—and raters will have to deal with a backlog of hundreds of thousands of hours of old programming. And what about commercials? They should be rated, as well, since they employ images of sex and violence.

• Who will devise the ratings? Congressmen have reiterated that the government will not be involved in actually rating programs. But what will happen if senators and representatives don't agree with the ratings? Or if consumers don't find them a reliable guide? Will the ratings be subtle enough to tell the difference between, say, *Roots* (a TV landmark as violent as it was educational) and *Walker, Texas Ranger* (a show as violent as it is, well, violent)? Because the chip is relatively unsophisticated, it is highly unlikely.

• Who will program the chip? Let's ignore for the moment that there's no good evidence that TV turns kids bad. It stands to reason that children most likely to be affected negatively by TV are precisely those living in environments least likely to contain parents who would decide what their children should be watching in the first place.

Such problems point to the likely outcome if the V-Chip passes: TV sets will be made more expensive to accommodate an ineffective potential ratings system that will have little or no effect on its targeted audience. Indeed, let's hear it for government efficiency.

We, Spy

By Brian Doherty

The ruinous effects of outlawing technologies

THE FEDERAL GOVERNMENT'S RECENT crackdown on "spy stores" that sell such wares as tie tacks, smoke detectors, and teddy bears containing video cameras, spray cans that temporarily make envelopes transparent, and other surveillance paraphernalia, could be cheered as a blow for the right to privacy. After all, many of those items' primary use seems to be to peep in on people without their consent or knowledge.

But this crackdown, which most recently led to indictment for executives of the Spy Factory Inc. chain, doesn't mean government is concerned about making sure no one can ever invade our privacy—any more than gun control is about making sure no one can threaten or attack us with guns, or proposed "Clipper Chip" technology is about preserving the integrity of private communications. All three are about government abrogating to itself monopolies on spying, on guns, and on the ability to decode computer messages.

A recent Nexis search pointed this out vividly; while a search on "spy shop" for the past couple of months produced mostly a variety of (very brief) stories about government raids, one story from the Ft. Lauderdale *Sun-Sentinel* was a very long magazine piece about a crime-busting unit down in Broward County. I was hoping this would be a lengthy account of the actual procedure leading to some spy store bust.

Instead, it was a paean to the wonder of the cops' ability to bust up gambling and drug rings (note the nature of the crimes)...using equipment bought at a spy store! These items are a great boon to law-enforcement efforts against victimless crimes, where sneakiness is necessary. But ordinary citizens could never need them, could they?

The United States has many laws targeting objects merely because of their alleged utility in committing crimes (guns, spy technology, computer encryption programs, drug paraphernalia) or the potential danger they can pose to the user (drugs and guns again). Automobiles, of course, fall into both categories, and to a far greater degree than most of the targeted items. So why does no one seriously advocate banning cars?

The very idea sounds silly, of course. We all know cars have a plethora of perfectly innocent and practically indispensable everyday uses that make banning them ridiculous. There's a wide social consensus that cars are OK. But that consensus took a while to develop, and is historically contingent.

WHAT IF, RECOGNIZING THE MANY USES cars had for criminals (transportation of contraband, quick getaways) and the severe damage to the existing social fabric cars represented, the government had chosen to ban or strictly regulate them in their early days—while keeping many cars for the government's own use, of course?

We would be living in a very different world today, as is easy to imagine. The development of engine technology and materials science are just two areas that would undoubtedly have been stymied without the impetus of the needs of car manufacturers. I doubt many would prefer living in a world without cars and the benefits, both direct and indirect, they have brought us.

But lawmakers, and much of the public, find that their imagination fails them when they accept laws against guns, drugs and drug paraphernalia, and spy stores. They can't imagine, or recognize, perfectly legitimate interests in using such items—or at least in making sure the government isn't the only one who can use them. (And it has a vivid history of misusing all of them.) And, of course, neither those who support such laws against objects qua objects nor those who oppose the laws can recognize what we *won't* get if we impose legal penalties on the sale of items. Banning such sales is particularly dangerous when it's an entire technology—miniaturized recording devices—whose distribution is targeted.

Raiding spy stores and hobbling cipher technology merely because of these new inventions' unfamiliarity (or the desire to protect government turf) can only have pernicious effects, halting advances in such technologies. That bodes ill for the people who could potentially profit from making or selling such items, as well as all the customers who want them and now can't get them.

A recent *New York Times* story on spy store products (which doesn't mention the government's crackdown until the next-to-last column) relates many here-and-now examples of people using such technologies in ways that may strike some of us as rude or even slightly scuzzy—but that may seem perfectly understandable to others.

Some people, for instance, looked in on their nannies to see how they really take care of the children. In another instance, one man tried to assuage his suspicions that roommates were breaking into his room. (The suspicions unfortunately were correct.)

Those are only quotidian examples that already exist; the potential benefits of eavesdropping technology, cipher technology, or any other kind of technology, cannot be known beforehand.

You can never do just one thing, a lesson that lawmakers never seem to learn from experience. And the law of unintended consequences for nipping technological innovations in the bud is sure to stymie unforeseeable benefits. It's one thing to have laws targeting acts that hurt people. It's quite another to target products and innovations merely because they might.

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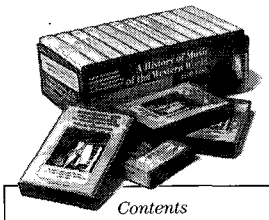

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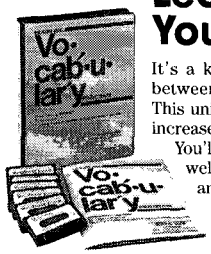

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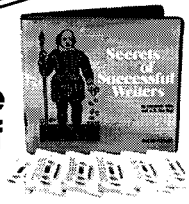

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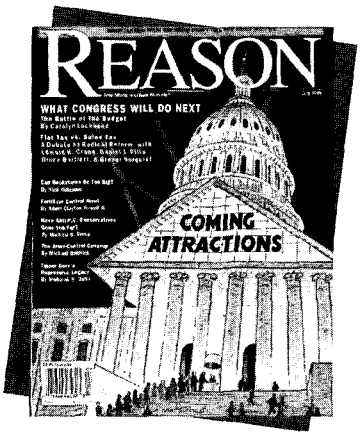

Taxing Battle

The excellent roundtable on tax reform ("Rewriting the Code," July) is thorough, thoughtful and comprehensive, yet fails to take account of a few basic facts that affect all of the proposals.

Total spending by all levels of government (a better measure of the real tax burden than total explicit taxes) was 41 percent of national income in 1994 (28 percent federal, 13 percent state and local) and 49 percent of personal consumption (33 percent federal, 16 percent state and local).

To replace all other taxes and eliminate the deficit, yet be "fiscally neutral," a flat tax on income will have to average roughly 40 percent across the 50 states, and a flat tax on consumption, roughly 50 percent. If either provides a personal exemption, the rate will have to be a good deal higher than that. These rates are approximate because the drastic change in the tax system would undoubtedly change both government spending and national income. We need, as the recent jargon goes, a dynamic, not a static, analysis.

It is literally impossible to collect taxes at these levels without a large, intrusive, and inefficient bureaucracy. Its initials might not be IRS, but the substance would remain. It is almost as impossible to collect such taxes by direct payments by taxpayers. That is why those of us at the Treasury working on tax reform supported withholding at source in 1942 when we were faced with the need to collect extremely high rates of taxation to help finance World War II.

Having written an article on a spending (i.e., consumption) tax in 1943 (true, for wartime, but ever since I have supported taxing consumption rather than income), and proposed a flat tax in 1962, I am clearly not opposed to either concept. However, I did not assume that a flat rate income or spending tax would replace all other taxes, or eliminate a large bureaucracy. Moreover the rates required to be "fiscally neutral" are far higher now than they were shortly after World War II or in 1962.

The important conclusion is that there is one and only one effective tax reform: *cutting government spending*. And the only effective way to cut government spending is to cut taxes, in whatever way, for whatever excuse, at any time. If tax cuts do not precede or accompany spending cuts, those cuts, I predict, will either never occur or, if they do, prove temporary. Undoubtedly some ways to cut taxes are better than others, but any way is better than none.

Milton Friedman
Hoover Institution
Stanford, CA

Just a few days after I received the July issue of REASON, I was listening to the Rush Limbaugh radio show. Mr. Limbaugh took a call about the proposed federal sales, or consumption, tax from someone claiming to be an employee of the IRS. This caller outlined a potential nightmare of paperwork in conjunction with a national sales tax that none of your authors considered in their articles on "Rewriting the Code."

He argued that a consumption tax would be even more invasive of privacy than the present income tax system. According to this caller, the IRS would require citizens to save all receipts to prove that they paid their consumption taxes. In addition, I imagine that we would still have to inform the IRS of our income, investments, and savings so that they could verify that we spent the amounts claimed.

Just imagine the boxes of receipts that we, and our children, would have to save were Congress to pass a consumption tax without prohibiting the IRS from acting in such a manner.

I guess it just goes to prove that all means of taxation are onerous in one way or another.

Questions for your authors: Would a sales tax apply to the purchase of securities? If not, on whose guarantee? If so, how would a sales tax prove beneficial to savings and investments?

Robert Bascle
Luling, LA

Any tax with a rate of zero percent for some people and 15 or 20 percent for others can hardly be called "flat." Unfortunately, any flat tax we may end up with will be "flat" in name only. And that is a part of a much larger problem.

For years politicians have been convincing Americans that a) We can have it all and b) Someone else will pay for it. For some people this may be true. For many others, however, it may be perceived to be true. The perception that they are getting a free ride at the expense of "the rich" or "big business" is sufficient motivation for people to vote themselves more benefits. Too many Americans don't realize how much the tax burden is costing them.

I agree with Grover Norquist that taxes should be "visible, painful, and applied equally to all taxpayers." Bruce Bartlett

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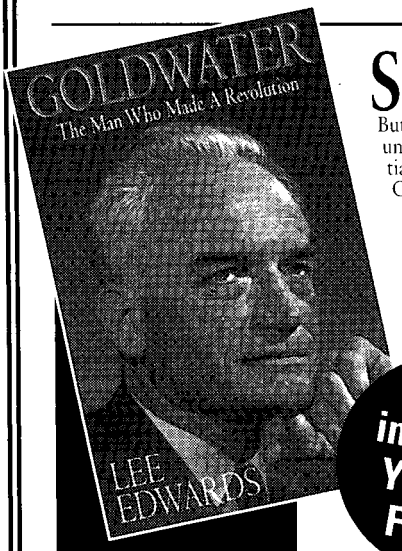

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★How Lyndon Johnson ordered Hoover and the FBI to "bug" the Goldwater presidential campaign plane late in 1964, and to conduct security checks of Goldwater's staff—all illegally

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points out that under a flat income tax, "A family of four would have to earn $25,000 per year before it paid any income tax" and that "there is no possibility that the Congress would enact a sales tax without doing something to reduce the burden on the poor." Yet, to include a zero percent rate (or a rebate mechanism in the case of a sales tax) for some people is to leave in place the incentive for these people to continue voting for higher taxes.

Any proposal, if it is to actually reduce the size of government, must reduce the number of people who perceive themselves to be receiving a net benefit and increase in numbers those of us who feel we carry more than our share of the burden. This will happen only if tax policy and tax rates apply equally to everyone.

Warren Michelsen
Page, AZ

We cannot assume the IRS would simply roll over and die. Although under a sales tax, the IRS may have less reason to intrude in the lives of private citizens, they would still be there to insure compliance under both plans. As long as there is a chance of creative bookkeeping, of underreporting, of evasion, there will be a need (in the eyes of the IRS) to enforce compliance with the tax code. In essence, if there are taxes, there will be a taxman.

There is also an inequity in either system. The one assumes the more I spend, the more I should pay to offset government expenditures. The other assumes the more I earn, the more I am obligated. Either way, it seems a crazy way to finance a government to me.

Stephen Kolcow Jr.
Albany, NY

In your recent tax debate, only Grover Norquist had a handle on the answer, which is to devote our energy to reducing the size of government and worry less about how its cost is gouged out of our hide.

As he correctly realizes, any national sales tax at the retail level will quickly deteriorate into a value-added tax such as the Hawaii State Excise tax, which is on every transaction at every level. One can only imagine the creativity in tax avoidance which will ensue when transaction taxes rise from 6 percent to 30 percent. A national sales tax will simply force more transactions, and businesses, underground. Once underground, businesses no longer pay any taxes, cannot borrow or enforce contracts, and ultimately the country slides into a Third World economy.

The Hall-Rabushka flat tax has a major flaw in that it allows low-income people to pay no direct tax at all. People who pay no direct tax have no stake in government spending and will become tax-and-spend constituents supporting whoever promises to raise other people's taxes and spend it on them.

The flat tax is my favorite, but with no one left out and with no exemptions. Only when a vast majority feel the pain directly will we get budget relief—which is my ultimate goal.

Larry Bartley
Kailua, HI

In offering their opinion on the optimal tax system, the analysts in REASON's roundtable on tax reform necessarily assume that the next tax change will be the last.

The Kemp-Roth changes in the 1980s essentially gave us a flat tax; the second bracket kicked in at about the same income level at which FICA withholding ended. But presidents of both parties agreed to impose new, higher rates on "the rich." The contract of the 1980s, in which we ceded some tax exemptions to buy lower rates, was broken. The exemptions are gone but we are now back up to five tax brackets. Imagine either the flat tax or the national sales tax/VAT 10 years later after several "millionaires' taxes" have been enacted as additional taxes on income. The result is on display in Europe and Canada.

Limiting Congress's power to sell tax favors is more important than the details of the resulting tax. I suggest that the gist of such an amendment should be: 1) There shall be only one federal tax; and 2) It shall have only one rate.

Separately, the zeal to abolish the IRS should be tempered by noting how some state tax agencies have fished through credit card and licensing records for evidence of out-of-jurisdiction purchases. This indicates that a consumption tax or VAT (especially at current federal levels of revenue and evasion) does not alone end the risk of intrusive enforcement.

Spike
Brentwood, NH

I was rather bemused by the flat tax ver- sus sales tax debate in your July issue. Presenting such a choice reminded me of the one given the condemned man—shooting or hanging? Each side described the evils of the other's proposal, and both were absolutely correct. Rather than debating the best way for the state to pick our pockets, libertarians need to concentrate our energies on reducing government spending (and thus intrusiveness) to the absolute minimum. When the federal role has been returned to that conceived by the Founding Fathers, how remaining taxes (if any) will be collected will be of little interest.

Hal W. Noyes
Orlando, FL

Edward H. Crane makes a strong case for the federal retail sales tax. But he makes an interesting point that is hard to support: "Suddenly we...have taxpayer solidarity. Suddenly, with no withholding or other hidden taxes, everyone is aware of the cost of government every time he or she buys a product."

Today, no one is aware of the tax paid to the federal or state governments on each gallon of gasoline he or she buys. In days past the cost of the gas, the federal tax, and the state tax was posted on every pump. That made it hard for federal and state legislators to increase the tax without a public outcry.

Once the retailers were unable to show the tax automatically the politicians could raise taxes and bury them in the cost of gasoline. Whenever taxes were raised, as far as the consumer was concerned, the price of gas went up. The same system

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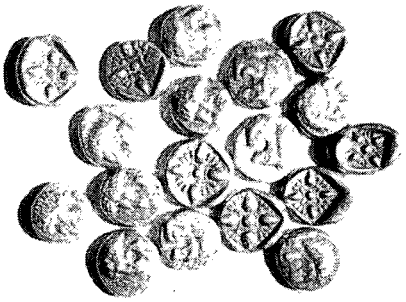

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would soon follow with other products. If you enjoy blank looks, ask anyone how much he paid for gas last time he filled up. If he even knows, then ask how much was the federal state tax and how much was the state tax.

Thomas Akin
North Hampton, NH

There are other objections to a consumption tax that were simply hinted at or not mentioned. First, imagine just how far down the ladder such a tax could go. *Any* transfer of goods might end up subject to a national sales tax; picture the feds requiring that homeowners throwing yard sales or people selling personal belongings collect and submit sales taxes.

Second, the national sales tax's proponents claim that the Internal Revenue Service can simply be done away with and that the government will no longer have any need to track incomes. What hogwash. The IRS or a successor will have to remain, if only to investigate and try to collect owed but unpaid income taxes of years past—unless the government intends to forgive all income tax evasion, which would be foolish and unfair. Besides, someone on a federal level will have to enforce collection of a national sales tax as a last resort in case states cannot or will not handle it; it may as well be the IRS.

And the federal government will still monitor your income, since not one of the tax reform proposals now under serious consideration—and this also applies to the flat-rate income tax proposals—will change or eliminate the separate Social Security and Medicare withholding from wages. The poor often already pay more in these taxes, which start at the first dollar earned, than in regular income tax, which does have a personal allowance, so they would still get hit. Repealing the 16th Amendment would seemingly make income-based withholding for these programs unconstitutional, so just how would they be handled? No one is saying.

Along with the mechanism for monitoring income to ensure that you pay Social Security and Medicare taxes, the mechanism for withholding from income will still be there and could easily be resurrected for a revived income tax. A lack of constitutional authority did not stop Congress from imposing an income tax during and after the Civil War, nor has it prevented widespread federal usurpations of Ninth and 10th Amendment rights today. And this, above all, shows what a scam "replacing" the federal income tax with a consumption tax would be. One day we would *still* end up with both and with an even more pervasive federal government monitoring every sort of transaction. Better the evil you know than the evil you don't: Let's pursue something like Rep. Dick Armey's flat-rate income tax plan, not a national sales tax.

Edwin Krampitz Jr.
Drewryville, VA

I was disheartened to see that the approach to tax reform taken by Messrs. Crane and Norquist in the roundtable on tax reform favored political tactics over economic efficiency. They seem to be so intently focused on their overriding goal of smaller government that they would impose a tax system both highly visible and painful to collect. They assume that painful taxes will necessarily lead the electorate to demand lower taxes and smaller government. This approach is risky. During the 1930s, economic pain led to more government and higher taxes. Economic hardship sometimes leads to even more harmful policy and neither Mr. Crane nor Mr. Norquist address this possibility.

The growth of the central government throughout this century cannot be explained by the existence of a painless tax system. If painful taxation were an effective means to affect a lower overall tax burden, the current system would have reduced tax revenues to rock bottom. And if the present tax system is too invisible, then why is sweeping tax reform such a popular issue?

The tax system has grown larger and more complex because the system is used by politicians to grant privileges. Taxpayers do prefer complicated high taxes to simple low taxes as long as the system includes a special feature they find particularly favorable. The U.S. tax code is not a mess because taxes are painless. Our current tax code is the natural consequence of political power that lacks the proper constitutional restraint.

If individuals are to enjoy the greatest degree of economic freedom and prosperity, then the tax system must be one that is guided by economic efficiency. To protect the tax system against the political pressures of special interests, it must be buttressed by explicit constitutional constraints on Congress. The principle of equality before the law should apply to taxation just as staunchly as it should to all legislation.

Mark McNary
Santa Barbara, CA

I enjoyed your roundtable on tax reform. For a long time, I have been in favor of a flat tax and considered a value-added tax a recipe for higher taxes.

My first reactions to a flat sales tax were negative. It seemed very regressive since lower-income people spend a far greater proportion of their earnings on necessities. Although I am sympathetic to Daniel Pilla's position that a sales tax would eliminate the IRS, I somehow doubt whether that would in fact happen. I can't imagine a huge government bureaucracy just closing their books and going out and finding real jobs.

I suspect the IRS would wind up working with the states to aggressively enforce compliance by small businessmen and entrepreneurs. With a much smaller number of tax collectors as compared to tax payers, the IRS would be able to greatly increase its percentage of audited businesses and probably become a very intimidating factor in the lives of our most productive segments of society.

While all the arguments for the various tax proposals were good, it was the responses that were most enlightening. I was left with the view that no proposal is going to improve the situation much, if at all. Maybe we need to go back to our roots and remember that, as Sy Leon stated long

ago, "The lesser of two evils is still evil."

William Edmunds
Park Forest, IL

Classical Gas

The absurdity of attempts to censor the lyrics of popular music is perhaps best illustrated by applying to the classics the language of the legislation proposed last March in New York state, and quoted in Mubarak S. Dahir's excellent article ("Sticker Shock," July).

Under the proposed standard, the state of New York would criminalize the sale to minors of a significant portion of the standard operatic repertoire, starting with nearly everything by Verdi. A few more examples: suicide—*Tosca*, *Tristan und Isolde*, *Götterdämmerung*, *Madame Butterfly*; incest—*Die Walküre* is contraband. Adultery? There goes *Lady Macbeth of Mtsensk*, *Don Giovanni*, *Così Fan Tutte*, *Falstaff*, and *Der Rosenkavalier*. Religious violence? *Samson e Dalila*, *Parsifal*, and maybe *Tannhäuser*. Morbid violence? *Salome*, *Siegfried*, *Jenufa*, *Der Freischütz*, and more.

Aside from the obvious violence they are doing to the First Amendment, those who purport to protect young people by attacking their music are, of course, treating the symptoms, not the disease. Like it or not, substantial market demand for these controversial works exists; perversely, as Mr. Dahir notes, restrictions may even enhance that demand. Advocates of this silliness would expend their energies far more productively elsewhere. Let us all encourage them to do so.

Frank C. Magill
Glen Carbon, IL

Correction

In Mack Tanner's "Extreme Prejudice: How the Media Misrepresent the Militia Movement" (July), the percentage of Jewish membership in the San Diego Militia was misstated. According to John Wallner, the group's president, one-half of its board of directors is Jewish.

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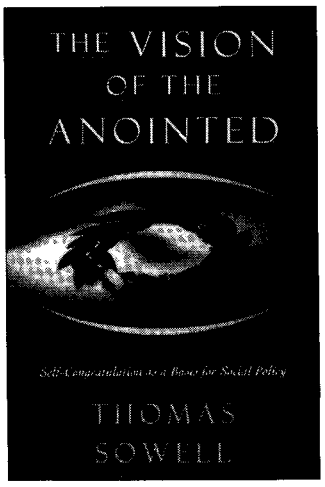

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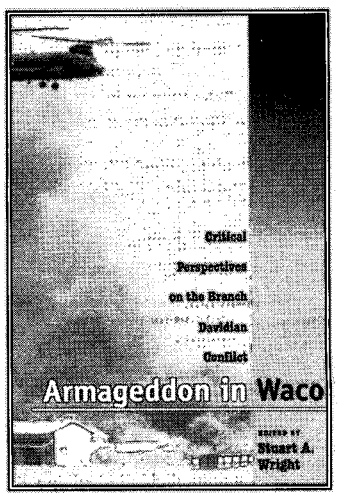

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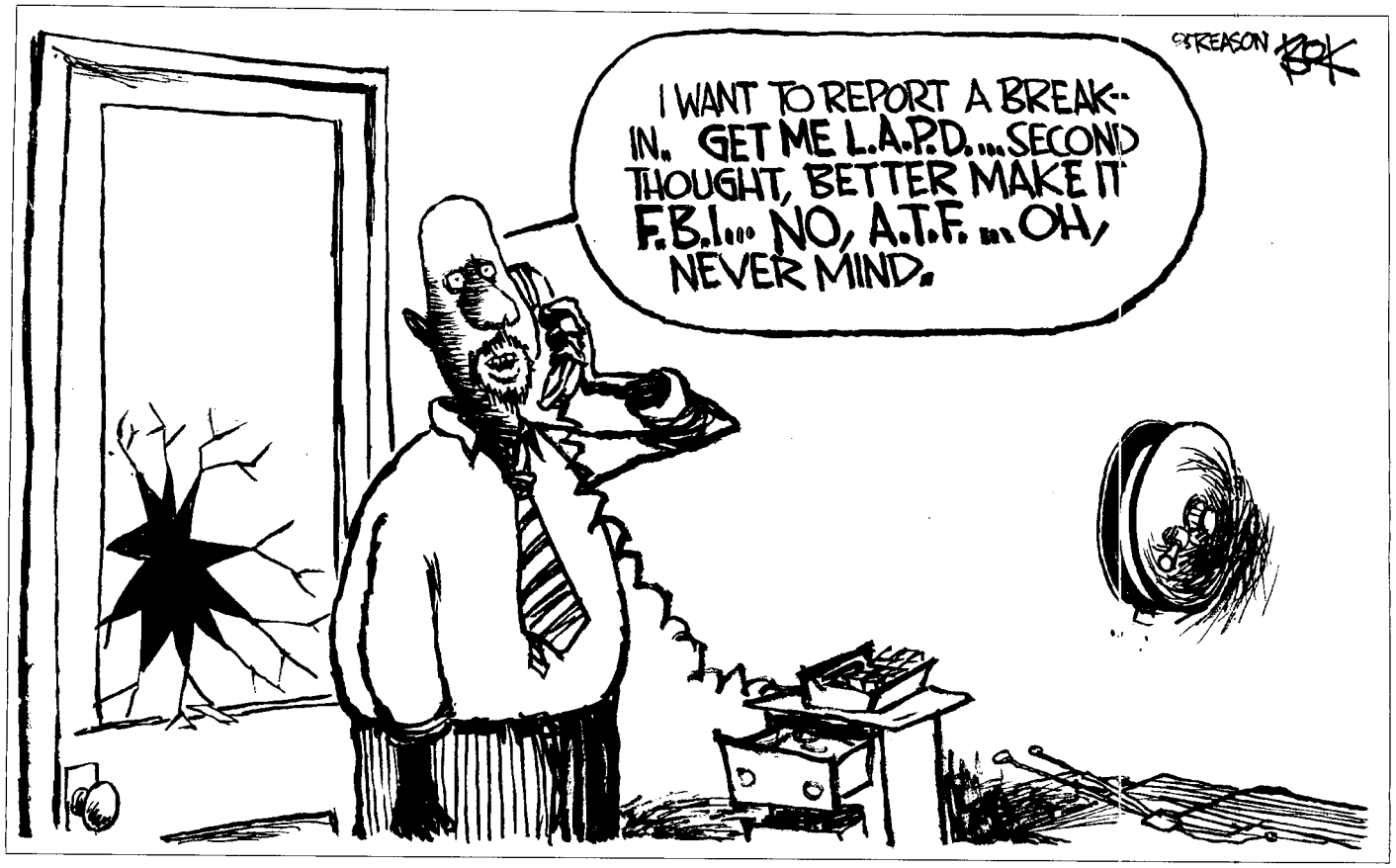

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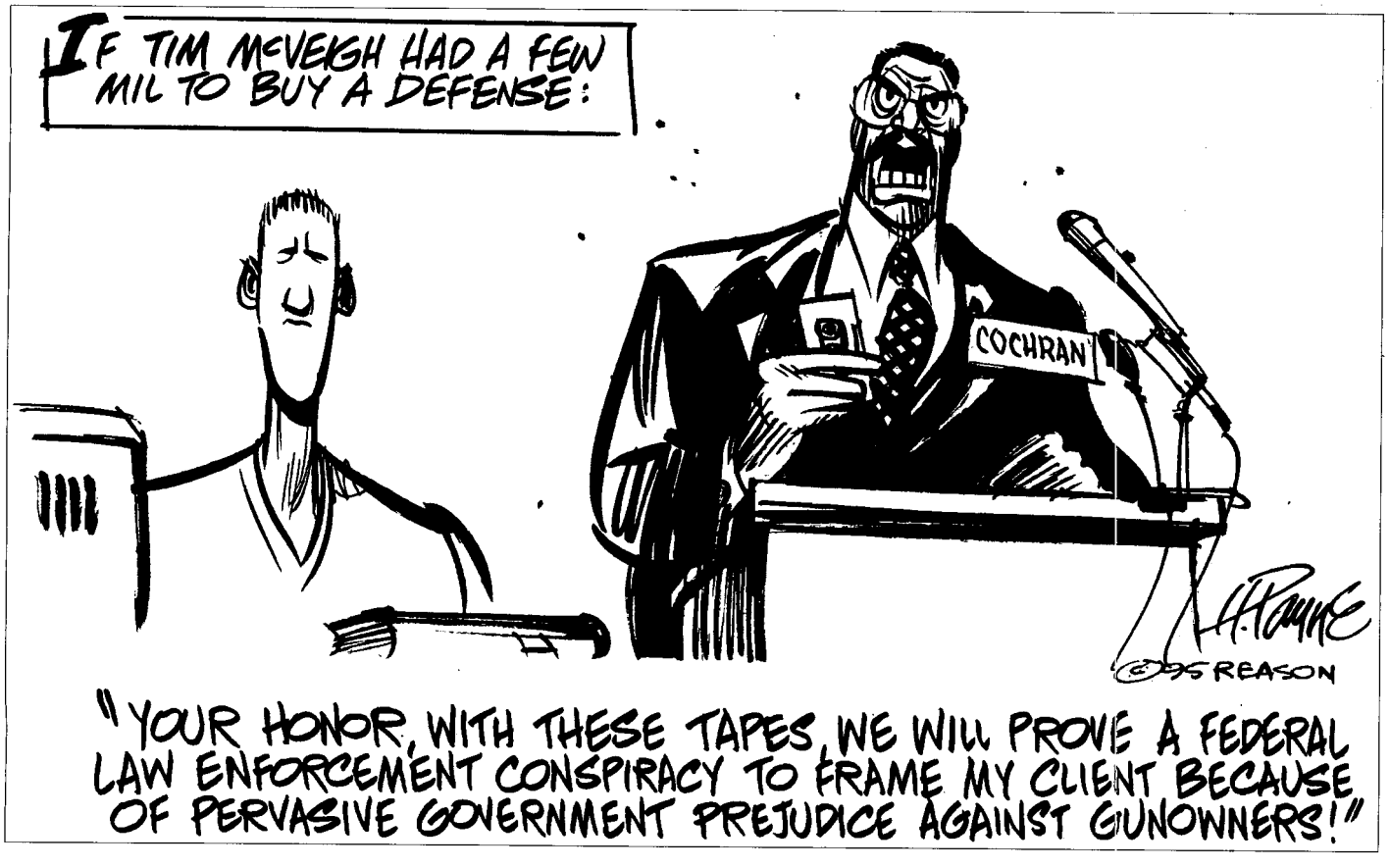
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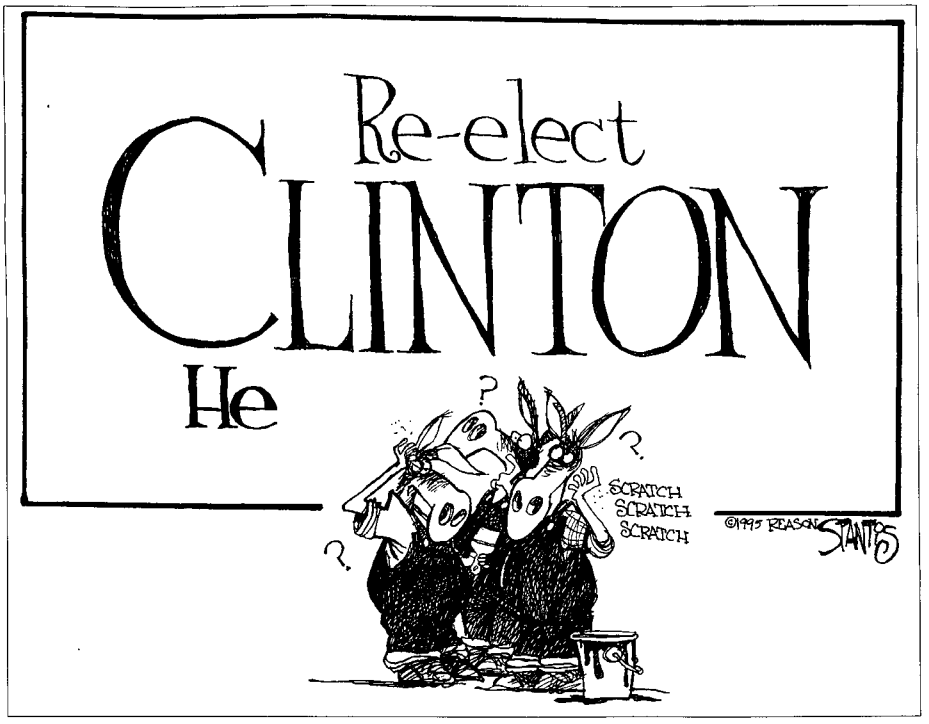


SCOTT STANTIS

Remember midnight basketball? It was supposed to keep gang members from fighting by keeping them busy with wholesome pastimes. Well, Syracuse, New York, schools have barred midnight basketball from using their gyms after a gunfight among teenagers broke out during a tournament.

Rep. Mark Souder (R-Ind.) said of the raid on Waco, "The only law that [the FBI] clearly established [David Koresh] broke that I can see so far is he had sex with consenting minors. Do you send tanks and government troops into the large sections of Kentucky and Tennessee and other places where such things occur?" After people in those two states complained, an aide to Souder said the congressman "shouldn't have narrowed it down to Kentucky and Tennessee." That's right. How can you talk about sex with minors and not mention Arkansas and Mississippi?

In Zimbabwe, the government has or- dered the organizers of southern Africa's largest book fair to remove a gay-literature exhibit. The government, which regularly seizes gay literature, has accused organizers of trying to force homosexual values on the country.

In Hyde Park, New York, a move to make the city seal a profile of Franklin Roosevelt has run into opposition. Seems some people are upset that FDR is portrayed with his famous cigarette holder clinched between his teeth.

To be compassionate, Italy passed a law in 1993 forbidding the imprisonment of those infected with HIV. This has turned out to be a boon for a few thousand career criminals. One gang of HIV-infected bank robbers has been arrested numerous times only to be freed within hours of each capture. They are suspected of taking at least $155,000 in their thefts.

Do a good deed, go to jail. That's the fate of Peggy Bargon. She gave a gift of an Indian dream catcher to First Lady Hillary Clinton. A dream catcher is a talisman made of feathers, which are supposed to trap bad dreams but let good ones through. Bargon used feathers from bald eagles, snowy owls, robins, and bluejays. She killed no animals for the gift, using only feathers collected from zoos and on the ground. No matter. It's still illegal to use the feathers. Fish and Wildlife heard about the gift, and now Bargon faces a year in the pokey.

More on the good deeds front. When Joy Glassman's son decided he wanted to be a firefighter, she did what any mother would do. She tried to help him advance in his career. Glassman allegedly set five fires in Northern California for her son's company to put out. Now, the woman is facing arson charges. Her son did not know of her alleged activity, but he has resigned his position with the fire department.

Never accuse G. Gordon Liddy of not being a humanitarian. The radio talk show host put together a fundraiser for victims of the Oklahoma City bombing. The source of the funds? A calendar featuring well-appointed young women wearing only skimpy lingerie and high-powered firearms. Its title: Packed and Stacked.

KTOZ-AM is a 500-watt radio station in Springfield, Missouri, that plays jazz. So you know it doesn't make any money. That's OK with the people who work there. They volunteer their time because they love the music, and all have real jobs. But the Labor Department apparently doesn't have the music in it. It says an ostensibly for-profit business can't be run by volunteers. It has fined the owners $20,000, plus penalties, and told them to start paying minimum wage.

The *Far Eastern Economic Review* re- ports that China plans to move 15,000 troops into Hong Kong when it takes over in 1997. A government spokesman says that's balderdash. The Chinese aren't going to move in more than 9,000 troops.

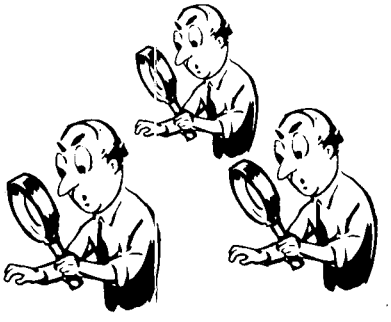
The views on the nation's scenic high- ways are beautiful, but they may not be natural. Seems that for many years the Forest Service has leaned on transportation officials to paint rocks on parts of some highways. When rocks are newly exposed because of landslides or construction, it takes them years to age. Rather than wait, the government has artificially aged them.

—Charles Oliver

The Watchers

Using delinquent parents to justify government snooping

By Rick Henderson



WELFARE-REFORM ADVOCATES from President Clinton to California Gov. Pete Wilson argue that strictly enforcing child-support requirements will prevent deadbeat parents from skipping their family obligations and will cut welfare costs. But in their zeal to track down delinquent parents, congressional welfare reformers threaten the liberty and privacy of every American, not just those who skip out on their spouses and kids.

Provisions in the welfare-reform bill passed by the House this summer and the bill pending in the Senate sponsored by Majority Leader Bob Dole would eventually give government employees access to personal and financial information on just about every adult. The bills would require every employer to register the name, address, and Social Security number of each person the company hires with two registries of new employees—one operated by the federal and another by that state's government. Since 65 million persons enter the work force or change jobs every year, and three-fourths of all employees will take new jobs within a decade, over time these new-hire registries would have records on most American adults.

The bills also would require states to include Social Security numbers on every application for a professional license, commercial driver's license, occupational license, marriage license, and divorce decree. When combined with the hiring registries, says David Banisar of the Electronic Privacy Information Center, use of the Social Security number would permit "one-stop shopping for government surveillance."

Databases with such information have only been kept on persons who had criminal records, says Deirdre Mulligan of the Center for Democracy and Technology, a privacy-rights group. "Now," says Mulligan, the government "will have access to highly detailed information on people who haven't done anything wrong."

Other provisions would make it easier for government agents or private citizens to snoop on individuals. The Fair Credit Reporting Act, for instance, now requires a court order before officials can look at someone's credit report. The welfare bills would repeal this protection and let any government child-support agency or a private sector proxy designated by the agency obtain a credit report by merely mailing a certified letter to the credit bureau. The bills would similarly repeal protections in the Right to Financial Privacy Act and let banks disclose individuals' financial records to state child-support agencies on request. ®

Stocks and Bondage

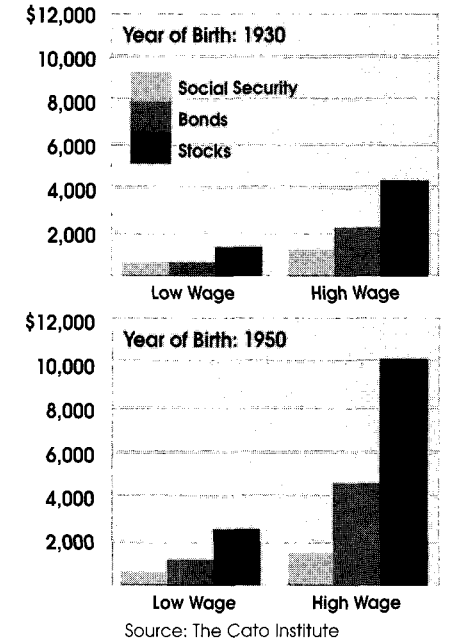
How Social Security stacks up against stocks and bonds

By Ed Carson

It's no surprise that stocks and bonds provide a much higher return than Social Security. But a new study by the Cato Institute, *Retiring with Dignity: Social Security vs. Private Markets,* makes it clear just how much workers are losing. The study calculates that high-income workers born in 1950 would receive $9,972 per month in 1995 dollars if they could have invested the wages that went to pay their Social Security taxes in the stock market. That's more than six times what they are scheduled to receive under Social Security. Workers who earn half the average national wage are also big losers under the current system. They could retire on $2,440 a month, but will have to make do with Social Security's $631.

The study makes conservative projections for the rate of return on stocks (10 percent) and bonds (7 percent). In addition, the study assumes that Social Security benefits will not decline and that payroll taxes will not increase. Since the system will be bankrupt by 2030, such a scenario is extremely unlikely.

Monthly Benefit Comparison of Social Security and the Capital Markets by Date of Birth and Income (1995 Dollars)



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Coalition to offer 'Contract' for families

By Larry Witham
and Laurie Kellman
THE WASHINGTON TIMES

The Christian Coalition, the nation's largest political coalition of religious conservatives, will deliver a "Contract With the American Family" to Congress when it returns from the Easter recess.

"The surveying is in the final stages, and we think we'll have something in a week or two," said coalition Executive Director Ralph Reed in a telephone interview. "We will present it to Congress when they get back."

In a speech to 150 students at Kennesaw State College in Atlanta on April 11, Mr. Reed outlined seven points that he called "the gist" of what a final document might contain.

That same day House Speaker Newt Gingrich was being feted at a banquet across town.

The Reed speech came after a massive mailing by the Christian Coalition in February and March to solicit priorities for social reform and raise money to pay for a survey of 2 million "Christian voters."

Sen. Bob Dole, left, accepts a "key to the state" from Gov. George Pataki, center, and Sen. Alfonse D'Amato after speaking at a fundraiser April 10 in New York. AP

Dole decries assaults on values

By Ralph Z. Hallow
THE WASHINGTON TIMES

DES MOINES, Iowa - Senate Majority Leader Bob Dole accused the entertainment industry of poisoning the minds of American youth while government assaults the values and moral codes taught in churches public schools would go far toward restoring a moral society.

"Voluntary prayer is forbidden in our classrooms," he told more than 1,000 people in the atrium of the state Capitol. "The moral code we nurture in our churches and synagogues is under attack from our government. We need our schools to once again reflect the Americans. Mr. Dole said, "One of the most alarming aspects of government intrusiveness has been the assault it has waged on our values."

At campaign stops on April 11 in Columbus, Ohio, and Des Moines, Mr. Dole railed against the entertainment industry.

"Every parent knows," Mr. Dole

Pattern seen as defections continue

By Donald Lambro
THE WASHINGTON TIMES

The growing list of Democratic defections to the GOP is sending shock waves through the Democratic Party's leadership, which fears further congressional losses in 1996 and beyond.

Democratic officials deny the desertions are part of a long-term political realignment favoring Republicans. But some Democratic strategists and rank-and-file activists think it's going to get worse for the Democrats before it gets better.

"Yes, it's going to get worse. It's going to go on for a while. You're going to see some more switches by some of these fellows who want to stay in office and who think that changing parties is the way to do

Rep. Nathan Deal

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Balance Sheet

By Rick Henderson

Assets

Simple Minds. With the help of congressional Democrats, Bill Clinton inadvertently advances the flat tax. The White House wants to get on the tax-reform bandwagon, reports *The Wall Street Journal*. But Clinton's advisers and Hill Democrats understand a sales tax is regressive and, at politically palatable rates, it won't raise enough money. And they insist on socking the wealthy with progressive rates. Look for the White House to endorse the incredibly unpopular value-added tax and some millionaires' surtax, leaving Dick Armey's flat tax as the only feasible alternative.

Trade Bait. Pressure mounts for ending the trade embargo with Cuba. The U.S. Chamber of Commerce, the U.S.A. Rice Federation, and such high-profile CEOs as Dwayne Andreas of Archer Daniels Midland and Revlon's Ron Perelman combine with local elected officials like Louisiana Gov. Edwin Edwards to push trade with Cuba. And despite public assertions that the embargo must stand, says *The New York Times,* the White House privately suggests it may reconsider the ban.

Second Opinion. Last year's defeat of ClintonCare dooms state-run universal health-care plans. Legislatures repeal or courts overturn centralized medical programs in Washington, Kentucky, and Minnesota.

Debt Heads. House GOP deficit hawks pledge to cut off Uncle Sam's credit cards. Unless the White House signs a budget that will be in balance by 2002, the 154-member Debt Limit Coalition pledges to freeze the federal debt ceiling. The coalition could deliver a majority: Its members include Republican Conference Chairman John Boehner (Ohio) and Policy Committee Chairman Chris Cox (Calif.). By mid-November, the feds might make Social Security payments. But without the ability to issue more debt, every other federal check could bounce.

Liabilities

Singapore Sting. Newt Gingrich finally makes the costs of serious drug prohibition explicit. The speaker will sponsor a bill mandating the death sentence (and allowing only one appeal) for convicted drug smugglers. And what would a drug-free America look like? The model country prohibitionists cite is Singapore, where until recently chewing gum in public was a crime.

Butt Heads. But the feds kinda *like* some drug abusers. In *The Washington Post*, Georgetown business professor John Hasnas writes that FDA Commissioner David Kessler has transformed smokers "from a despised and oppressed rabble into the newest legally protected minority." Since the feds now regulate cigarettes as drug delivery devices, under the Americans with Disabilities Act, smokers are addicts, and officially disabled.

Bridesmaids Revisited. Ross Perot. David Boren. Colin Powell. Bill Bradley. Such Beltway mavens as Bill Schneider and Kevin Phillips plead for *any* centrist independent to mix it up with Clinton, Dole, Gramm, et al. But behind the poll numbers, Perotistas and their none-of-the-above allies hold few coherent political beliefs. Anger is no substitute for a cohesive vision.

Loss Leaders. The GOP's infatuation with small businesses may cost taxpayers plenty. House Small Business Committee Chairman Jan Meyers (R-Kan.) initially quashes any attempt to eliminate the Small Business Administration. And Senate Small Business Committee Chairman Kit Bond (R-Mo.), co-chairman of Bob Dole's deregulation blitz, pushes forward a bill expanding the SBA's guaranteed loan fund by 35 percent, from $7.8 billion to $10.5 billion.

Renovating Rent Control

California weakens price controls. Will New York be next?

By Nick Gillespie

If it's true that California is a bellwether for the rest of the country, then rent control may be on its last legs. This past summer, in a move widely attributed to the Republican gains in the state Senate, the California legislature voted to replace rent control in five Golden State cities with a policy known as "vacancy decontrol."

Vacancy decontrol, which is in force in Los Angeles and a number of other cities across the state, allows landlords to charge market rates to a new renter whenever a tenant voluntarily leaves a given unit. Annual rent increases for continuous occupants may still be regulated by various local authorities.

"It's not abolition, but it's a major change," says economist Michael St. John, head of St. John & Associates, a Berkeley-based consulting group and author of a 1993 study that documented the negative impact of restrictive rent control on poor and elderly residents in Berkeley and Santa Monica, two cities often cited by rent-control advocates as models to follow.

The California vote follows a 1994 referendum in Massachusetts that abolished rent regulation statewide. The next battleground over rent control is likely to be New York City, whose rent-control regulations expire in 1996 and must be renewed by a now-Republican state legislature and governor. Both Gov. George Pataki and State Senate Majority Leader Joseph Bruno are outspoken opponents of rent control.

"The prospects look good for a rollback—if not a complete elimination—of rent control in New York," says James Taranto of the Manhattan Institute, a public-policy think tank based in the Big Apple.

Go Figure

Government numbers often don't add up.

By Brian Doherty

THE GOVERNMENT DEPENDS ON chains of data and numbers for many of its tasks, from calculating cost-of-living hikes to cobbling together international trade figures and collecting tariffs. And if a chain is only as strong as its weakest link, then the government's chains of reasoning are ready to snap at many junctures.

A recent series of studies has cast doubts on the accuracy of many varieties of government data, some with huge consequences and some only minor. All, however, raise troubling questions about the quality of information the government uses to make policy.

Perhaps the most important trouble spot is the Consumer Price Index, used to measure inflation and to set cost-of-living increases in federal benefits and inflation adjustments in federal income taxes. Analyses from the Congressional Budget Office and the Federal Reserve show the CPI overestimating inflation by anywhere from 0.2 to 1.5 percent. Such inaccuracies in the CPI can be expensive: If the CPI is overestimated by 0.5 percent annually, it will add $47.8 billion to the deficit over the next five years, according to Office of Management and Budget estimates.

Errors and deficiencies in U.S. trade statistics can make for unnecessary policy worries. In 1990, the General Accounting Office reports, there were fears of a capital drought in the United States, with a purported net $5 billion outflow in private capital. However, statistical discrepancies for that year's figures add up to $73 billion, making any conclusion about the real situation difficult. The GAO says that trade statistics very possibly undercount U.S. exports in general.

There are problems on the import side as well. The GAO went over reams of data on unit value of imports and found errors in more than half of the transactions they studied. In one case, for instance, the GAO found a range in values for wood dowel rods in which the highest unit value was 952,250 times the value of the lowest.

The GAO also found, in a separate report on the Environmental Protection Agency's collection and management of its scientific data, that "many of EPA's scientific data sets are either incomplete, obsolete, or missing altogether" and that "the agency has long relied on outdated scientific information...some criteria (e.g., metals criteria) are overly stringent and based on outdated science."

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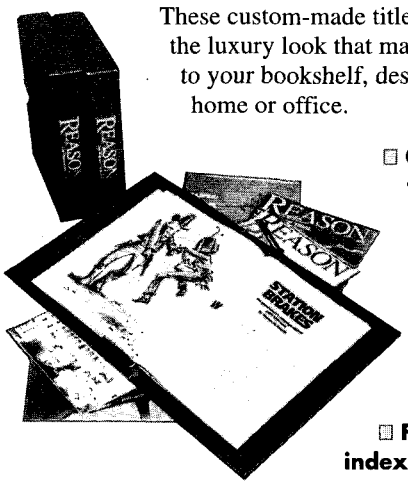

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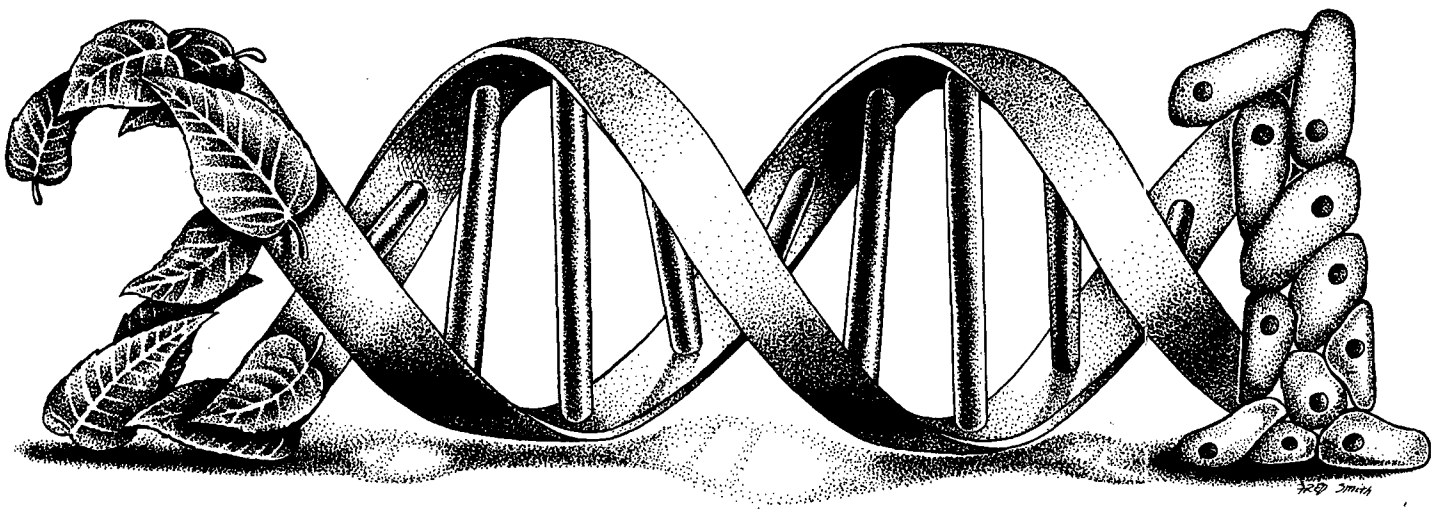


Understanding culture, technology, and politics in "The Biological Century"

By Gregory Benford

As the millennium approaches like an overloaded freight train—fat with metaphor—we shall see many attempts to peer beyond the veil of that magical number, 2000. (For purists, 2001.) Many try to do linear extrapolations from current trends. Others assume, like southern Californian weather forecasters, that tomorrow will be pretty much like today, only more crowded.

Perhaps the best approach to prognostication uses analogy: Could *our* century have been foretold in the 1890s?

First, recall that the 19th century was dominated by the metaphors and technological implications of two sciences: chemistry and mechanics. Wonders as striking as railroads and steamships conspired with humble revolutions like the use of artificial fertilizer to make the world new and bountiful.

To be sure, other themes were sounding through the serene Victorian atmosphere. At mid-century, the audacious Darwin-Wallace theory of evolution by natural selection began preparing the ground for modern biology and excited enormous public furor. Elsewhere in England, Michael Faraday and James Clerk Maxwell were laying the foundations of electromagnetic technology. Their discoveries promised much that could be used fairly soon in practical ways. Darwin troubled minds, but had no pragmatic implications.

While the older crafts and models of Newtonian mechanics and workaday chemistry drove the great economic and social engines of the Victorian era, in the waning decade of the century, Edison, Marconi, and others sounded the opening theme of the next, electric era. These inventors caught the public's imagination. Radio saved the *Titanic*'s passengers; Edison captured movement and sound. The great, unsettling conceptual shifts of relativity and quantum mechanics followed later. By 1910, the transition was obvious.

For clearly, physics has dominated our century. It has altered everything, from wars to whores. Electromagnetic theory and experiment gave us the telephone, radio, TV, computers, and made the internal combustion engine practical—thus, the car and air-

FRED SMITH

plane, leading inevitably to the rocket and outer-space exploration. Indeed, the fateful wedding of rockets with the other monumental product of physics, nuclear bombs, led to the end of large-scale strategic warfare—as profound a change as any in modern times.

Even now, as the century wanes, physicists remain our scientific Brahmins. They dominate government committees, holding forth on topics far beyond their nominal expertise: defense, environmental riddles, social policy. And yet, far from the physics departments of the great campuses, a clarion call is sounding through our time, one that responds to hot-button environmental problems and that incorporates rapid advances in other laboratories: Biology has turned aggressively useful.

By analogy, we stand on the threshold of the Biological Century. Just as the 1890s hummed with physical gadgetry, our decade bristles with striking biological inventions. Conceptual shifts will surely follow. Beyond 2000, the principal social, moral, and economic issues will probably spring from biology's metaphors and approach, and from its cornucopia of technology. Bio-thinking will inform our world and shape our vision of ourselves.

Beyond 2000, the principal social, moral, and economic issues will probably spring from biology's metaphors and approach, and from its cornucopia of technology. Bio-thinking will inform our world and shape our vision of ourselves.

The Easy Era

Even as particle physicists desperately, unsuccessfully tried to get their $10 billion Superconducting Super Collider built in Texas, a smaller initiative quietly proceeded: the Human Genome Project. This vast effort, eventually costing about $3 billion, will map the human genetic code—our DNA. (Researchers have already completely sequenced a bacterium genome.)

The Genome Project's first director was James Watson, co-discoverer, with Francis Crick, of DNA. The project is the largest job ever attempted in biology, but surely not the last foray of biologists into "Big Science," where physicists have cultivated their own plantations for decades.

DNA sequencing opens vast ethical issues. We shall be able to know who has defective genes. What will it mean when we can be sure we're not all born equal? Worked out, the implications will scare a lot of people. Insurance companies will not want to cover those with a genetic predisposition to illness, for example. Here lurk myriad lawsuits.

But these are short-term ethical questions, surely. The true solution lies in *fixing* genes, not merely reading them. If parents-to-be can have their problem genes edited into normal ones, most of the issues may evaporate. And this is just one of many advances that portends much. Will we stop at cleaning up what we see as defects? I doubt it.

As we all saw in grade school, once you learn how to read a book, somebody is going to want to write one—that's how authors are made. Once we know how to read our own genetic code, someone is going to want to rewrite that "text," tinker with traits—play God, some would say.

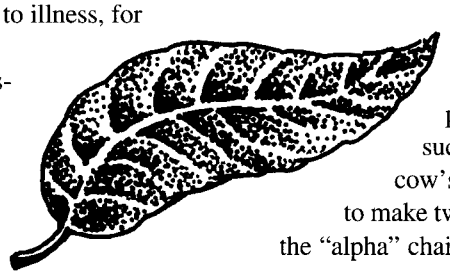
True rewriting lies a few decades off, I believe. The first years of the Biological Century will probably be an Easy Era, much as physics enjoyed a period of largely uncritical acceptance of wonder after wonder, until The Bomb. Remember that radium was widely thought to be a general cure until Madame Curie died of her exposure.

The first signs of a quiet revolution in our daily lives will probably come with some fairly non-controversial commercial products. Much research has gone into cellular critters that can digest oil spills or other toxic contaminants. Some work reasonably well already. Soon enough such research will give us a spectrum of organisms which digest unpleasant substances. That should mean refineries that don't stink, rivers that don't catch on fire, streams that aren't sewers.

Plants have plenty of chemical defenses and a smart farmer will come to use that. In temperate zones, winter is the best insecticide; it keeps the bugs in check. The tropics enjoy no such respite, so plants there have developed a wide range of alkaloids that kill off nosy insects and animals. Nicotine is an excellent insect foe; the fact that humans addict to it is a curious side effect. Adapting such defenses to orchards and crops is an obvious path for biotech.

Consider the farm of the next century, which we might better call a "pharm"—because it may well be devoted to growing proteins, not wheat. Already researchers can synthesize proteins in animals by co-opting their own schemes for making, for example, milk.

Genetically altered goats have been made to yield in their milk a particular human protein which effectively dissolves the fibrin clots responsible for coronary occlusions. Efficiencies are low, but probably won't remain so. To get high yields, it will be a good idea to go to dairy cows, which produce 10,000 liters of milk a year.



Imagine a cow which yields insulin, the expensive lifesaver of diabetics. We could make such a beast by editing the genes that control the cow's internal chemistry. The simple way would be to make two kinds of cows, one that produced milk rich in the "alpha" chain that helps make up insulin, and a second that

makes the "beta" chain. This would free the cows from having to contend with insulin in their own systems, for only when the alpha and beta chains are mixed do we get insulin itself.

Insulin grown down on the pharm would probably be much cheaper than ours today. Similarly, there seems no barrier to making many pharmaceuticals in natural systems. Sheep might be specialized to a whole range of useful drugs, for example. International giants such as Merck are studying such avenues now.

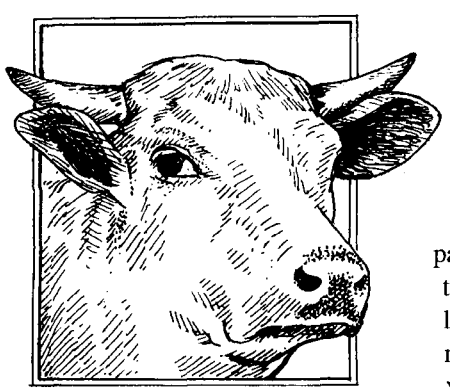
Sheep, goats, and cows would become the essential "bioreactors" that reproduce themselves in a barnyard biotech which could benefit many farmers who never heard of protein tinkering. But there will be troubles, because such animals don't breed true. A dairyman in Argentina will have to come back to Pharms Unlimited for his next calf. Indeed, Pharms Unlimited would be mad to make its cows so they can reproduce their (patented!) technology without a fat fee. So the Third World may see this as just another way to keep them on an unbreakable economic string.

Ponder a bath mat that slowly tugs itself across the floor, slurping up puddles, deposits of soap and hair spray, hairs, general "human dander." It lives on the stuff, plus occasional diet supplements from the otherwise distracted homemaker—who thinks of it as a rug, not a pet.

Such technology will spread into the immensely profitable realm of direct consumer goods. The easiest will be items so commonplace that on television they look like simple extensions of what we already have.

Imagine a kitchen cleanser that dissolves waste in those hard-to-get places, maybe even invading the grouting of tile in pursuit of fungus. Present "enzymatic" cleaners like Tilex have to be sprayed on and rinsed off. A living variety could patrol on its own, digging very deep, then be rolled up into its holder, lying dormant until needed again. You won't run out of it.

Or ponder a bath mat that slowly tugs itself across the floor, slurping up puddles, deposits of soap and hair spray, hairs, general "human dander." It lives on the stuff, plus an occasional helpful dollop of diet supplements from the otherwise distracted homemaker—who thinks of it as a rug, not a pet.



The opening wedge of such products will be less startling. Invisible, convenient, they'll come innocently, not seeming to announce a revolution. Resident "toothpaste" that does the essential policing up after lunch, and maybe even makes your breath smell, well, not so bad. Stomach guardians that ward off Montezuma's Revenge before you notice a single symptom—permanently, because the microbes are symbiotic with you, and live throughout your digestive system.

Even insulin cows would become obsolete if we develop microbes that can do the essential task directly in the body. We now can modulate some controlling genes that supervise elaborate biochemical transactions. It seems feasible within a decade or two to tailor these controller genes exquisitely. Then we could produce a capsule containing controller microbes that directly sense the patient's blood glucose level.

This scenario has been suggested by molecular microbiologist Mark O. Martin of Occidental College. Once inserted in the body, such a capsule would respond to glucose changes by making insulin, just as the patient's body should. With a specially designed capsule wall that lets nutrients and glucose in, and insulin out, but keeps the bacteria confined, side effects would be minimal. This could be far more reliable than having patients clumsily self-sample and inject, as they do now.

Such medical improvements face little opposition, particularly if they are hidden inside the body. Overt changes will not be so welcome. Some, though, could be attractive.

Market forces seem likely to spur imaginations. Fad blends easily with fantasy. Maybe there will be a fashion in bio-corduroy, which lives off your sloughed-off skin, perspiration—and even, if you like, some of your less agreeable excretions.

The theme in the Biological Century will be biological balance—what's waste to one creature can become food to another—with a desirable job done in the transaction. This is "homeostasis," the biological equivalent of the thermostat. Such ecology on a small scale could become a public sign of trendy virtue, as popular as recycling is today.

Biotech revisits ancient arts. For many millennia we've been breeding cows and corn, collard greens and collies, to our whim. We can expect more exotic foods, of course, but as important, we may see new and better ways of growing them.

Ants and Analogies

Consider a field of maize—corn, to Americans. At its edge a black swarm marches in orderly, incessant columns. In one column, each ant carries a kernel of corn. In another, each carries bits of husk. In still another, an entire team coagulates around a chunk of a cob. The streams split, kernel-carriers trooping off to a ceramic tower, climbing a ramp and letting their burdens rattle down into a sunken vault. Each returns dutifully to the field. An-

other, thicker stream spreads into rivulets which leave their burdens of scrap at a series of neatly spaced anthills; dun-colored domes with regularly spaced portals, for more workers.

These had once been leaf-cutter ants, content to slice up fodder for their own tribe. They still do, pulping the unneeded cobs and stalks and husks, growing fungus on the pulp deep in their warrens. They were already tiny farmers in their own right. But biotech had genetically engineered them to harvest and sort first, processing corn right down to the kernels.

Other talents can be added. Acacia ants already defend their mother trees, weeding out nearby rival plants, attacking other insects which might feast on the acacias. Take that ability and splice it into the corn-harvesters, and you do not need pesticides, or the drudge human labor of clearing the groves. Can the acacia ants be wedded to corn? We don't know, but it does not seem an immense leap. Ants are closely related and multi-talented. Evolution seems to have given them a wide, adaptable range.

We can bioengineer ants into agricultural robots, cleaning corn off cobs and getting rid of the husks. Acacia ants already attack other insects which might feast on the acacias. Take that ability and splice it into the corn-harvesters, and you do not need pesticides.

Following chemical cues, they seem the antithesis of clanky robots, though insects are actually tiny automatons engineered by evolution, the engine that favors fitness. Why not just co-opt their ingrained programming, then, at the genetic level, and harvest the mechanics from a compliant Nature? After all, agriculture is the oldest biotech. But everything else will alter, too.

Mining is the last great, traditional industry to be touched by the modern. We still dig up crude ores, extract minerals with great heat or toxic chemicals, and bring to the surface unwanted companion chemicals. All that suggests mining must be rethought—but on what scale? "Biomining" is actually quite ancient.

Romans working the Rio Tinto mine in Spain 2,000 years ago noticed fluid runoff of the mine tailings was blue, suggesting dissolved copper salts. Evaporating this in pools gave them copper sheets. The real work was done by a bacterium, *Thiobacillus ferroxidans*. It oxidizes copper sulfide, yielding acid and ferric ions, which in turn wash copper out of low-grade ores. This process was rediscovered and understood in detail only in this century, with the first patent in 1958.

A new smelter can cost a billion dollars. Dumping low-quality ore into a sulfuric-acid pond lets the microbes chew up the ore, with copper caught downhill in a basin; the sulfuric acid gets recycled, at trivial cost. Already a quarter of all copper in the world, from Peru to Alaska, comes from such bio-processing.

Gold enjoys a similar biological heritage. The latest scheme simply scatters bacteria cultures and fertilizers over open ore heaps, then picks grains out of the runoff. This raises gold recovery rates from 70 percent to 95 percent. There is not much room for improvement. Phosphates for agriculture can be had with a similar, two-bacteria method. By noticing that our mining waste was food for another phylum, we close a biological loop, cleanse our human world of "pollution," extend our resources, and make a profit.

All these developments use "natural biotech." Farming began by using wild wheat—a grass. Antibiotic therapy first started with unselected strains of *Penicillium*. We've learned much, mostly by trial and error, since then. The next generation of biomining bacteria are already emerging. A major problem with the natural strains is the heat they produce as they oxidize ore, which can get so high that it kills the bacteria.

To fix that, researchers did not go back to scratch in the lab. Instead, they searched deep-sea volcanic vents and hot springs, such as those in Yellowstone National Park. They reasoned that only truly tough bacteria could survive there, and indeed, found some which appear to do the mining job and can take near-boiling temperatures.

Bacteria also die from heavy-metal poisoning, just like us. To make biomining bugs impervious to mercury, arsenic, and cadmium requires bioengineering, currently under way. One tries varieties of bugs with differing tolerances, then breeds the best to amplify the trait. This can only take you so far. After that, it may be necessary to splice DNA from one variety into that of another, forcibly wedding across species.

We are already in the Easy Era. Around us, often without fanfare, emerge new technologies: engineered drugs, pest-resistant plants, single-gene alterations in plants and animals, genetic diagnostics (though usually only DNA testing of suspects makes the news). Within two decades we shall see "bioactive" products which work and live among us and in us, engineered organisms, "pharms," and limited genetic editing.

Alas, only in retrospect shall adjusting to these changes seem easy.

Cultural Convergence

From our blinkered perspective, a Biological Century looks like a fundamental shift in world view, with ramifications that will reach into every cultural corner.

Physics proceeds by atomizing nature, and this habit of mind has deeply penetrated realms far from science. Every fiction writer knows that the trick is immersing the reader in a world, a knitted vision. Yet some schools of literary criticism have aped physics, deconstructing literature until it is a swarm of disjoint

words, each ambiguous, their author irrelevant. This stress on contradictory or self-contained internal differences in texts—jam jar labels or novels alike—rather than their link to a culture of meaning, merely leads to literature seen as empty word games.

A biologically sophisticated world view would counter this, looking for how artists and writers manage their integrative effects. Current academe often casts a cold eye on genres, whether the lyric or the epic, the western or the musical, contending that such overt formal differences don't matter much. This may be because genres don't yield to theories of atomized arts, but are best seen as cross-talk, conversations within communities, progressing down through time—evolving. Genres clearly unfold and interact, ragtime to jazz to blues to rock, suggesting biological metaphors.

What would a criticism look like, done in a biological style? Both species and genres have intense interior interactions. Seen in the large, population statistics in literature and life may follow similar laws, though of course occasional individuals can deflect the prevailing tide, in both culture and in survival fitness. Weighing these seemingly contradictory thrusts is the integrative task before us, selectively using conceptual roots from modern biology.

Biologist Richard Dawkins has stressed the role of cultural ideas which propagate themselves, termed "memes," after their analogy to genes. Similar conceptual leaps could dispel the physics-latent mechanical imagery which inhabits much of economics, politics, and the humanities. Marxian ritual invocations of control and commodification, shrouded in a fog of conspiracy, proceed ultimately from misapplied classical mechanics. Self-organization through inherently chaotic interactions, the signature of our economic times, cannot emerge from the linear landscape of deterministic mechanical laws.

Replacing such habits of thought in the minds of managers requires such movements as "bionomics" and, generally, recalling that biology itself is no fixed set of immutable ideas. Evolution itself evolves as an idea, in our time introducing punctuated equilibria, sociobiology, and cladistics—the method of looking through time for evolutionary relationships among creatures.

All these will have to be tested, and in turn will generate fresh analogies for our views of economics. We shall see economic analogies that use not mere competition/cooperation balances, but complex, nonlinear responses to ever-changing circumstances. Predator/prey evolve into symbiotes; nature need not be red in tooth and claw.

Once our technologies learn the trick of reproduction à la nature, not à la factory, we may see a collision between the classical economy of scarcity and one of bio-plenty. Thinkers like Freeman Dyson have been pointing out that the specters which haunt our present—strip-mining and burning up our dwindling resources—may be as narrow a vision as was Spain's obsession with taking gold out of the New World, while missing tobacco, the potato, "love apples" (tomatoes), and the rest.

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Biotech opens the promise that the truly fundamental resources will be sunlight, water, organic chemicals, and land—privileging the tropical South and "green tech." This could neatly turn the tables on the industrial, "gray tech" North which will develop the biotech in the first place. Spain, after all, sent Columbus, but missed the boat conceptually in the following century.

An immense payoff for a small, but self-reproducing investment of "smart" biotech is a daunting possibility. We dropped jackrabbits into Australia before we knew their long-range impact. This point is not lost on the Luddites of our time, the Jeremy Rifkin crowd that fears any biotech product, and considers animal husbandry as "slavery."

The Wild Blue Maybe

One of the troubles with such apparently open-ended future projections is that we have no firm idea of what the limitations on biotech will be. Chances are, they'll be wilder than we think. The Frenchmen who first rode hot air balloons and gazed up at the lunar crescent surely did not glimpse the centuries-long path that led through the airplane and the rocket to Tranquility Base.

The most complex riddle in biology is our own brains, possessing about a 100,000 times the connections in a state-of-the-art Cray supercomputer. These connections work about a hundred thousand times faster than the comparable computer networks. This yields an organism with about 10 billion times the capabilities of our billion-dollar number crunchers. Consider what could be done by modifying some of the wiring diagram of that brain, or perhaps just some of its inherent chemistry. The potential for vast improvement—and vast damage—is immense.

Our currently common idea of software running on hardware works for machines, but not for brains. Our brains don't just store data in files. They modify themselves in response to strong inputs, laying down fresh patterns. This is why your memories of an incident can be modified by hearing another's version, or seeing a film of it. Brains form new routes for thinking—self-programming and self-hardwiring.

To reflect this, I think we will need a new category—*liveware*. Like art, "living" is a property nobody can define exactly but

everybody thinks they can recognize. The virtue of live technology is the same as the dray horse—it can look after itself, in its own fashion. Cropping grass, burning that grass for energy in its belly, relieving itself, the horse does a lot of its own maintenance. Liveware would similarly police its own act, and be able to make copies of itself in the bargain, just like the dray.

A bioteched piece of liveware should be patentable. Europeans generally recoil from patenting any "living invention," whether a gene, a cell, an engineered plant, or a human body part. In the United States, patents are commonly given. We shall see a major collision between voices of environmentalism, "social justice" and religion, and international corporations like Monsanto. American patent expert Rebecca Eisenberg recently observed, "In the U.S., we think of the morality issue as outside the realm of the patent system."

A bioteched piece of liveware should be patentable. We shall see a collision between voices of environmentalism, "social justice" and religion, and international corporations. This division will accelerate as business tries to patent genes and plant traits.

This fundamental division will accelerate as business tries to patent genes and plant traits extracted from the tropical world. The Department of Commerce estimates that life patents will be worth $60 billion worldwide by 2010. This is a deep, gut issue, like abortion, and it is approaching quickly.

But what's patentable is also, alas, mutable. Once made, it can undergo mutation and make something we did not intend. That's evolution, folks—biological, social, psychological. As the title to Kevin Kelly's survey of these developments suggests, in many unsettling ways, the Biological Century will be *Out of Control.*

This very quality collides spectacularly with the pervasive scientific illiteracy of most industrial societies, especially the United States. Throughout the early 1990s, the University of California at San Francisco waged a costly, ultimately unsuccessful battle with nearby residents simply to carry on research. They were routinely accused of letting loose infectious pathogens, toxic wastes, and radioactivity. In public hearings, one excitable citizen suggested that doing recombinant DNA work had produced the AIDS virus. Another declared on television her outrage that "those people are bringing DNA into my neighborhood."

By the time the public begins to see just how rapidly change can come, the Easy Era will be over, never to return.

Human Categories

Intention is the crux of the moral issues we will face. The abortion battles of our day will pale compared with the far more intimate and intricate capabilities that yawn just a decade or two away. In the United States, abortion hasn't gone away as an issue—and the issue is essentially unchanged. The nature of biotech is change. What will happen, then, when changes come thick and fast, as they are already starting to?

Consider: Brahmins in India use amniocentesis to determine the sex of a fetus early on in pregnancy—and then preferentially abort the girls, because sons are more prized. This "genetic counseling" frames a typical conflict between our easy categories. Where does "reproductive choice" end when it systematically acts against females? If allowed to go on, we could produce harrowing population differences far from the near-50/50 balance of sexes, a testosterone-steeped society with ever-more crime and war. The questions can only get tougher.

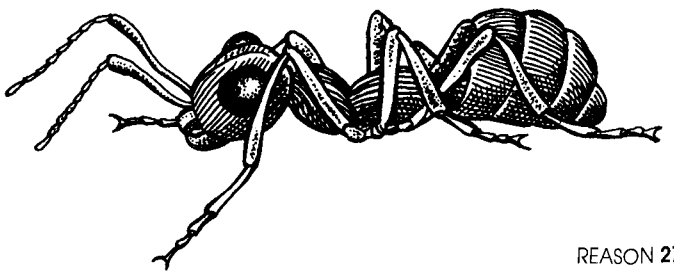
And more subtle, as well. The first genetic tuneups will be for the elimination of inheritable diseases—kidney disorders, hemophilia, and the like. Such single-gene tailoring could appear by 2000. The pope will oppose it as the opening wedge, and the battle will be joined.

But it won't be settled, only broadened. Then will come genetic cosmetics: tailoring for eye and hair color, skin tint, maybe breast size (look at the implant industry today), and height. We do not know if these are controlled by single genes, but probably some are, and the others will prove to have only a few loci.

We're already familiar with the yuppie competition to get Junior into the very best kindergarten. What expense will parents spare if, a decade or two into the next century, they can tailor their children for beauty? A firm jaw for men, firm breasts for women? We all know that good-looking people do well. What parent could resist the argument that they were giving their child a powerful leg up (maybe literally) in a brave new competitive world?

This will outrage many. Science is being perverted, they will say. From the noble elimination of a hideous disorder, like hemophilia, we will descend to the mere pursuit of transient appearances.

Somewhere, law (excruciatingly arrived at), or fashion (often underestimated, never absent), or deeper arguments (heard only by an elite) will draw the line. There will remain the familiar problem of oversubscription. Just as a bachelor's degree was once a proud emblem and is now tarnished by being common-



place, beauty—and, lest we grow smug, maybe even brains—will come to be so. Indeed, since beauty is another form of fashion, generations may sport characteristic, trendy noses and thighs, just as we currently see passing fads in children's names. But names can be changed with the stroke of a pen.

Of course, the first genetic editing and rewriting will be done for the rich. When F. Scott Fitzgerald told Ernest Hemingway that the rich were different, Hemingway could confidently reply, "Sure, they have more money." No longer will that be strictly true. Rancor arising from built-in superiority, by right of inheritance, could soar.

One of our challenges will be to spread the benefit, or else see growing class separations of frightful complexity and depth. We could reach the stage in which one could spot the rich by their looks, or even their smarts. Or their mates. Classical liberalism holds that information is good. If you can afford it, that is.

We will probably be able to make cocaine from a bacterial culture. Such a ready supply will certainly doom a simple "War On Drugs" approach. Legalizing, taxing, and regulating their use will be far cheaper than following a Prohibition mentality against an ever-improving biotechnology.

Why, then, should a prospective bride not know the precise genetic endowment she would get from a candidate swain? We are just beginning to consider whether a genetic propensity for disease should be made known to insurance companies or employers.

Those legal battles can be settled in the context of privacy rights. But how about something as intensely personal as marriage? People care deeply about their children. It seems plausible that they would want to know what they are getting before going to the altar.

Being Human

All these naturally arising problems will tend to make us think of other people as anthologies of genetic traits—to atomize, a most thoroughly modern impulse. This reflects science's tendency to slice and dice experience for convenience of analysis, but it is a poor model for knitting up the already raveled threads of a tattered society.

So somewhere, a line will be drawn. It had better be fixed by open public debate, rather than by our current method of leaving it up to lawyers in courtrooms, who usually know little and care less. Biology touches the wellsprings of our deepest emotions, and will make posturing before juries even worse than now.

Other developments, just over the horizon, will probably force us to entirely rethink present ideas of good and evil. Within a generation, we will probably be able to make cocaine from a bacterial culture. Kids will grow it or morphine or opium—in bathtubs, not in elaborate labs.

This will do for our current drug prohibition what home-brewed beer did for Prohibition. Even easier ways are plausible: say, a bacterium which lives in your digestive tract and makes just the right level of cocaine every day. (Something like this has happened naturally. A patient turned up who was permanently drunk, from a yeast which made alcohol in his innards. Therapy freed him of a condition others might have envied.) Far more exotic methods of eluding detection, and of making new designer drugs, will no doubt emerge.

Such a ready supply will almost certainly doom a simple "War On Drugs" approach. Legalizing, taxing, and regulating their use will come to be far cheaper than following a Prohibition mentality against an ever-improving biotechnology.

In fact, I believe it already is cheaper and smarter. We have over 1.3 million in American prisons, the majority for drug-related crime. The average sentence for murder in California is for fewer years (eight) than the average sentence for drug crimes.

Prohibition of anything is about power and imposing a uniform value system. Technology in the next century will probably act against central control. This will push our cultural boundaries, with biotech steadily increasing the friction. In the end this may force a new social solution, resembling the European programs already using partial legalization, combined with the social pressure that has reduced tobacco and alcohol use.

Dreams and Dreads

Out of playfulness—and cowardice—I've scrambled many ideas together without talking about when they might come.

To orient ourselves, I would call "mundane" the measures that have obvious market roles right away, and little social resistance. This includes pollution policers, simple bathroom cleaners, crops that resist pests and herbicides, pharm animals, "designer" plants (blue roses, low-cal fruit), bacterial mining, and the like. Even correcting human inheritable diseases will probably go through without major opposition. All this, perhaps within the first two decades of the new century.

The battles will begin in earnest with conceivable but startling capabilities. The list is long. Big changes in our own genome. Harnessing natural behaviors to new tasks (the acacia ant-corn harvesting marriage). Designer animals, like a green Siamese cat to match your furniture, or even a talking collie (and what would it say?). These may preoccupy the middle of the next century.

Even further out would be major alterations in the biosphere, and in us. Adapting ourselves to live in a vacuum or beneath the sea, or to convert sunlight directly into energy, would alter the

human prospect beyond recognition. Changing *homo sapiens* to something beyond will be a step fraught with emotion and peril. Such issues will loom large as the Biological Century runs out. And what could lurk beyond that horizon? The mind boggles.

All these are mere glimpses of what awaits us. A century is an enormous span, stretching our foresight to the full. Reflect that H.G. Wells's *The Time Machine* appeared only a century ago, in 1895. Biotech, as Aldous Huxley foresaw in *Brave New World* (1932), can usher in as profound a revolution as industrialization did in the early 19th century. It will parallel vast other themes—the expansion of artificial intelligence, the opening of the inner solar system to economic use, and much, much more.

The Achilles' heel of predictions is that we cannot know the limitations of a technology until we get there. A 19th-century dreamer might easily generalize from the forthcoming radio to envision sending not merely messages by the new "wireless," but cargoes and even people. Matter, after all, is at bottom a "message."

But there's more to it than that, and the awesome radio didn't develop into a matter transmitter, which is no closer to reality than it was then.

So undoubtedly I'm wrong about some of these analogy-dreams, particularly the timing. What I will bet on is that, despite the current fashion for "nanotechnology"—artifice on the scale of a nanometer, the molecular level—biotech will come first. It is easier to implement, because the tiny "programs" built into lifeforms have been written for us by Nature, and tested in her lab.

In fact, some of the most interesting prospects of nanotech-like thinking come from biological materials. The basic mystery in biology is how proteins figure out how to fold themselves, which determines myriad biological functions. An obvious long chain molecule to fold and use as a construction material is DNA itself. A self-replicating "bio-brick" could be as strong as any plastic.

Consider adding bells and whistles at the molecular level, through processes of DNA alteration. Presumably one could then make intricately malleable substances, capable of withstanding a lot of wear and able to grow more of itself when needed.

It isn't fundamentally crazy to think of side-stepping the entire manufacturing process for even bulky, ordinary objects, like houses. We have always grown trees, cut them into pieces, and then put the boards back together to make our homes. Maybe we will someday grow rooms intact, right from the root, customized down to the doorsills and window sizes. Choose your rooms, plant carefully, add water and step back. Cut out the middleman.

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Whether such dreams ever happen, it seems clear that using biology's instructions will change the terms of social debate before nanotech gets off the ground.

The rate of change of our own conception of ourselves will probably speed up from its present already breakneck pace. The truly revolutionary force in modern times has been science, far more than "radical" politics or the like. This seems likely to be even more true in the future.

Yet the above examples underscore the implications of leaving genetic choices to individuals. Society has some voice in defining boundaries, surely. But typically we arrive at consensus slowly, whereas biotech speeds ahead. Perhaps here we see the beginnings of a profound alteration in the essential doctrine of modern liberal democratic ideology. There may be genetic paths we will choose to block. How do we recognize them, quickly?

Our species has made enormous progress through swift cultural evolution. Now that quick uptake on changing conditions can come from deep, genetic change. We will hold the steering wheel, however shaky our grip, and not pitiless, random mutation.

We will emerge from a Biological Century with a profoundly different world view. Perhaps some new technology will promise to shake our foundations in the dawn of the 2100s, too. Mercifully, we cannot see that far.

Our prospect is wondrous and troubling enough. It is as though prodigious, bountiful Nature for billions of years has tossed off variations on its themes like a careless, prolific Picasso. Now Nature finds that one of its casual creations has come back with a piercing, searching vision—and its own pictures to paint. ®

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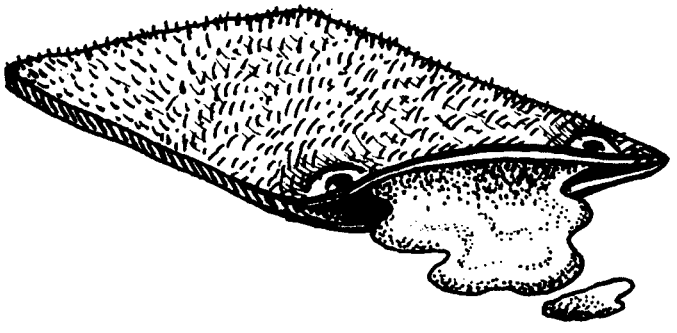

SHOOTING BLIND

Press coverage of the "assault weapon" controversy suggests that most journalists know very little about guns—and are not interested in learning.

By William R. Tonso

In a September 1988 report on "assault weapons" that he prepared for the Education Fund to End Handgun Violence, gun control advocate Josh Sugarmann candidly observed: "The weapons' menacing looks, coupled with the public's confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons. In addition, few people can envision a practical use for these guns."

So back in 1988, one of the nation's leading gun prohibitionists was banking on public support for restrictions on "semi-automatic assault weapons," not because Americans were informed about the guns in question, but because they were uninformed and likely to remain so. Sugarmann, now executive director of the Violence Policy Center, could rely on the public's continuing confusion because he knew he would have the help of the nation's leading news organizations. During the next few years the major TV networks, newspapers, and magazines persistently misled the public about the capabilities of "assault weapons," falsely implied that the guns have no legitimate use, and ignored the Second Amendment issues at stake. Given the intensity of this misinformation, it is hardly surprising that polls find some 70 percent of Americans support the "assault weapon" ban approved by Congress last year.

Many members of the current Congress, including Senate Majority Leader Bob Dole, favor repealing the ban, although that effort was put on hold in the wake of the Oklahoma City bombing. In reporting on the continuing controversy, the national press routinely cites strong public support for the ban. The lead of an April 6 story in *The New York Times* is typical: "A group of House Republicans plans to introduce legislation on Thursday to repeal last year's ban on assault weapons, even as national polls continue to show that a majority of Americans favor it." Having whipped up hysteria about "assault weapons," journalists now point to the results of their alarmist reporting as evidence that they were right all along. Although big journalism's misleading coverage of this issue can be partly explained by a combination of ignorance and arrogance, it seems clear that hostility toward the right to keep and bear arms has played an important role.

From the beginning, stories about "assault weapons" blurred the distinction between semi-automatics and machine guns. Machine guns are automatics: They fire as long as the trigger is held back. The possession of such firearms has been strictly regulated by the federal government since 1934. They have long been banned in some states, and no new automatics have legally entered civilian circulation in the United States since 1986. But semi-automatics, regardless of how much some of them may *look* like machine guns, fire one shot per trigger pull. Civilians have commonly used them for recreation and self-defense since the turn of the century

True assault rifles were developed by the Germans during World War II and adopted by the major post-war powers. Such rifles combine the spray-fire capabilities of the less-powerful submachine guns and the one-shot-per-trigger-pull, aimed-fire capabilities of more-powerful battle rifles. Assault rifles are less powerful than traditional military rifles, which fire cartridges long used for hunting and target shooting. The assault rifles' smaller cartridges are easier for soldiers to carry in large numbers, and they reduce recoil, so the guns can be controlled during automatic fire.

Domestic and foreign manufacturers offer semi-automatic-only variations of assault rifles, submachine guns,

MARC MICHELON

and other automatic firearms for civilian sale in the United States. Although the label is quite elastic, it is for the most part these high-tech–looking guns that Sugarmann and other gun prohibitionists call "semi-automatic assault weapons." But the hallmark of an assault rifle is a switch that allows the gun to be fired automatically or semi-automatically. A gun that fires only semi-automatically is not an "assault" anything, no matter what people like Sugarmann claim.

So why the confusion? It may be due partly to a misunderstanding of common usage. Until the "assault weapon" hysteria, gun users and gun manufacturers often referred to ordinary civilian semi-automatic shotguns, rifles, and pistols as "automatics." This practice has never confused knowledgeable gun people, but it may have led uninformed journalists astray.

Over footage of a machine-gun demonstration, a gun-control advocate explained that the semi-automatics targeted by "assault weapon" legislation have no hunting or other sporting uses. NBC created the impression that the gun being demonstrated would be affected by the ban, that opponents of the ban wanted to hunt with machine guns, and that sport is the only legitimate reason for which Americans need guns. None of that is true.

The level of ignorance about basic gun facts among reporters should not be underestimated. Consider a July 10 article from the Associated Press that appeared in the *Chicago Tribune* under the headline, "Use of Assault Guns Rising Among Youth, U.S. Says." The story describes a report from the Bureau of Justice Statistics on the use of guns in crime and notes that "the report comes while the Republican-controlled Congress is considering legislation to eliminate the 1994 federal ban on 19 assault weapons." Yet despite the headline and the reference to the ban, the findings cited in the story say nothing about the use of "assault weapons." Rather, they indicate "a growing trend toward use of semiautomatic pistols," a category that includes all handguns except revolvers and one- or two-shot weapons.

Still, ignorance alone cannot explain big journalism's treatment of the "assault weapon" issue during the past decade. *Newsweek* helped launch the "assault weapon" scare three years before Sugarmann's report with a 1985 cover story titled, "Machine Gun USA." While the article acknowledged the difference between semi-automatics and machine guns, it implied that the former could be converted into the latter so easily that the difference was of little significance. The story was accompanied by illustrations of several semi-automatic versions of automatic weapons, with captions that cited the much higher firing rates of the automatics.

But big journalism's misinformation campaign against "assault weapons" did not hit its stride until after the 1989 Stockton, California, schoolyard shooting, perpetrated by an emotionally disturbed man armed with a semi-automatic version of the Soviet AK-47 assault rifle. The coverage of this and subsequent "assault weapon" developments regularly confused semi-automatics with machine guns.

Coverage by NBC and, to a slighter degree, CNN has been consistently egregious. Since the Stockton attack, these two networks have often shown their viewers demonstrations of machine guns spewing out bullets at an impressive rate during discussions of one-shot-per-trigger-pull semi-automatics. On several occasions, NBC carried this deception a step further. Over footage of a machine-gun demonstration, a gun control advocate would explain that the semi-automatics targeted by "assault weapon" legislation have no hunting or other sporting uses. The network thereby created the impression that the gun being demonstrated was the type that would be affected by the ban (which it wasn't), that opponents of the ban wanted to hunt with machine guns (which they didn't), and that sport is the only legitimate reason for which Americans need guns (which it isn't).

I have shown these juxtapositions of machine-gun demonstrations with semi-automatic commentaries, which last just a few seconds, to introductory sociology classes. Out of about 250 students, only 18 recognized that the gun being demonstrated was not a semi-automatic. So how much of that 70 percent public support for a ban on "assault weapons" is actually support for a ban on machine guns, which are already severely restricted?

Last year I called NBC to complain about its latest use of machine-gun footage in a story on semi-automatics. The gentleman who answered that call excused the juxtaposition as a mistake; he hung up when I pointed out that NBC had been making that same mistake for five years. When I called back to get his name, he hung up again. The next day I spoke with David McCormick, NBC's man in charge of broadcast standards, who acknowledged that the network had received complaints about the "assault weapon" stories before and had tried to correct the problem. But he said it was hard to prevent rushed producers from grabbing whatever footage was handy when the topic of "assault weapons" came up. He was quite pleasant, even after I said that sloppiness seemed a lame excuse for the misleading juxtapositions NBC had aired for five years. After all, heads rolled at NBC over a single assisted explosion of a GM truck, but the network has yet to even acknowledge repeatedly misleading the public about "assault weapons." Wayne LaPierre, executive vice president of the National Rifle Association, reports that NBC even aired one of these juxtapositions shortly after he spent several hours demonstrating the difference between semi-automatics and machine guns to an NBC crew.

Unlike NBC and CNN, CBS acknowledged the difference between machine guns and semi-automatics early on, during its

March 16, 1989, special live edition of *48 Hours*. Like *Newsweek*'s 1985 cover story, however, *48 Hours* made light of the distinction. Semi-automatics can be fired fast enough and with better control than machine guns, noted reporter David Martin as he fired a true assault rifle in the semi-automatic mode after firing it in the fully automatic position. He did not demonstrate (or even mention) more conventional-looking semi-automatic sporting guns that can be fired just as fast as the high-tech–looking semi-automatics and have been widely used by civilians for close to 100 years. Martin also made much of the firepower of guns equipped with large-capacity magazines. He did not mention that magazines can be changed so quickly that three 10-round magazines can produce nearly the same firepower as one 30-round magazine.

Martin also emphasized that a semi-automatic can be converted into a machine gun. But so can almost any other gun. Way back in 1889, for instance, gun designer John Browning converted a lever-action rifle into a machine gun. During World War II, the Australians converted many bolt-action rifles into machine guns. For decades the Pathans of Hindu-Kush have produced automatic weapons from scratch in shops far less sophisticated than those that can be found in countless basements and garages across the United States. Any competent machinist who knows guns can do these things. But the gun prohibitionists claim "semi-automatic assault weapons" can be converted into machine guns more easily than other guns. It's not clear whether that's true, especially since the definition of this category is fuzzy. According to the Bureau of Alcohol, Tobacco, and Firearms, weapons that can be readily converted into machine guns are already regulated as machine guns. In any case, it is certainly illegal to carry out such a conversion. Furthermore, ease of conversion to a restricted configuration could justify banning all rifles and shotguns on the ground that they can be easily converted into sawed-off weapons.

Ignorance may account for Martin's incomplete reporting on these issues. But he went beyond ignorance when he claimed that it took him less than two hours to find a gunsmith willing to convert a "semi-automatic assault weapon" into a machine gun—a job that supposedly took just nine minutes. Viewers saw only about 15 seconds of the alleged conversion, not enough for even the Bureau of Alcohol, Tobacco, and Firearms to determine if it had actually been carried out, though the BATF did send a letter of reprimand to CBS. In a letter to a complaining viewer, CBS claimed that the conversion had been completed but that the gun had then been immediately converted back to semi-automatic. If the gun was not fired, how did Martin know that it had in fact been converted into a machine gun? Since Martin was shown firing an automatic rifle immediately after the brief conversion footage, viewers were led to believe that they were seeing the results of the conversion—unless they knew enough to recognize that the allegedly converted gun was not an M-16 like the one that was fired.

So we have only CBS's claim as evidence that a conversion was carried out at all, let alone in nine minutes. If it was carried out, CBS violated federal law and received no more than a written reprimand for doing so. If it was not carried out, CBS lied to its viewers. Either way, CBS went out of its way to help demonize "semi-automatic assault weapons" and to further the cause of the gun prohibitionists.

In a later segment of the same *48 Hours* special, reporter Bernard Goldberg interviewed a Florida gun manufacturer. As Goldberg prattled on about the company's guns being used by drug dealers and other criminals, viewers got glimpses of menacing-looking pistols being test fired and prepared for shipment. Most probably did not recognize that the "assault pistols" shown, despite their menacing looks, were chambered for the low-powered .22 cartridge that has been a recreational favorite since the late 19th century. No mention was made of this fact.

Indeed, big journalism's coverage of "assault weapons" has seldom noted that the guns so labeled fire cartridges commonly used for recreation and self-defense. Quite the contrary. More often than not, the coverage has claimed that these guns are extraordinarily powerful. Some journalists have even resorted to fakery to support this false claim. According to sources in the Los Angeles County Sheriff's Office, shortly after the 1989 Stockton schoolyard attack, a reporter and photographer from the now-defunct *Los Angeles Herald Examiner* asked a deputy to demonstrate AK-47 power by shooting a watermelon with one. The deputy replied that a gun firing the full-metal-jacketed, military ammunition used at Stockton would simply put a hole in the melon, and that is exactly what happened when he shot it. The reporter then asked the deputy to shoot a melon with his pistol, which he did. Though far less powerful than the rifle, his 9mm pistol fired an expanding hollow-point slug that splattered the melon impressively. Both the puncturing of a melon by the more-powerful rifle and the splattering of a melon by the less-powerful pistol were captured on film. The *Herald Examiner* then published the photograph of the splattered melon—but cred-

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ited the rifle.

About that time, splattered-watermelon demonstrations started appearing on KABC in Los Angeles and other California stations as well as on the national news, but the connection to the *Herald Examiner* fakery, if any, is not clear. It is possible that some of these TV demonstrations were honest. As gun control opponent Neal Knox has shown in a Gun Owners of America video, military-style 7.62x39mm slugs fired from an AK-47 can splatter a watermelon, apparently depending on the melon's ripeness and other variables. Even if these TV splatterings were actually produced by AK-47s, however, the demonstrations were still deceptive unless they also showed what ordinary guns will do to a melon, as an ABC News special did on January 24, 1990. While ABC showed an AK-47 putting baseball-sized holes in watermelons and the Gun Owners of America video featured splattering fruit, both demonstrations also showed common sporting guns *vaporizing* watermelons.

Despite their destructive capability, no one is calling for a ban on sporting weapons, because hunting and target shooting are still widely considered acceptable reasons for owning a gun. By contrast, military-style semi-automatics are said to be fit only for drug dealers and mass murderers. Yet police figures show that "assault weapons" are rarely used in crimes, and such guns have a number of legitimate civilian uses that could be easily discovered by any journalist curious enough to look for them.

Though American shooters were not immediately attracted by the non-traditional appearance of these otherwise fairly unremarkable guns, their durability and, ironically, their media-generated notoriety have helped increase interest in them. For the first time in our history, American troops are equipped with rifles of a type (automatic or burst-fire) difficult or (in some states) impossible for civilians to own legally. Hence, civilians interested in the military-style rifle matches long supported by the federal government have to use semi-automatic–only variations of our recent and current military rifles. Many farmers and ranchers in sparsely settled areas have accepted certain models of these light but durable military-style semi-automatics as varmint and utility rifles. Boaters off the coast of Florida, wary of armed drug runners, also seem to have acquired an interest in such guns, and so have collectors and hobbyists. In other words, it is demonstrably false that civilians have no practical, sporting, or recreational uses for these military-style semi-automatics.

But the most important reason American civilians should have access to these guns has nothing to do with recreation or even with defense against criminals. It has to do with the main purpose of the Second Amendment to the U.S. Constitution, an aspect of the "assault weapon" story that the national press has almost completely ignored. The Second Amendment states: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." This amendment is seldom even mentioned in establishment news coverage of the gun issue, even though it is the main source of opposition to gun controls. With the exceptions of 1983 PBS and 1993 A&E documentaries, a May 22, 1995, *U.S. News & World Report* article, and a few conservative, libertarian, and populist columnists, what little journalistic commentary that does mention the amendment almost invariably claims that its meaning is unclear, that it is outdated and should be repealed, or that it protects only the right of the National Guard to possess guns.

But the meaning of the Second Amendment is very clear to the vast majority of scholars who have examined the paper trail left by the Founders. James Madison's friend Tench Coxe expressed their concerns succinctly in 1789: "As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow citizens, the people are confirmed by the next article in their right to keep and bear their private arms."

The Founders also made it clear that the "militia" consisted of the whole armed people. *The Federalist Papers* and other writings indicate that they feared large professional military forces and select militias (like the National Guard). Citizens and their privately owned guns were part of the system of checks and balances that the Founders felt was necessary to keep government from drifting into tyranny. Authors of the 50 law review articles that support this interpretation include such prominent, liberal, non–gun-owning scholars as Sanford Levinson of the University of Texas, Akhil R. Amar of Yale, and William Van Alstyne of Duke.

According to Title 10, Section 311 of the U.S. Code, the National Guard is still only the organized part of a militia that consists of practically all able-bodied males and some females between the ages of 17 and 45 who are citizens of the United States or have declared an intention to become citizens. The only 20th-century Supreme Court ruling touching on the Second Amendment (*U.S. v. Miller,* 1939) acknowledged that militiamen called to service "were expected to appear bearing arms supplied by themselves *and of the kind in common use at the time*" [emphasis added]. In 1939, American troops were equipped with semi-automatic pistols and were being equipped with semi-automatic

No one is calling for a ban on sporting weapons, because hunting and target shooting are still considered acceptable reasons for owning a gun. By contrast, military-style semi-automatics are said to be fit only for drug dealers and mass murderers. Yet "assault weapons" are rarely used in crimes, and have a number of legitimate civilian uses that could be easily discovered by any journalist curious enough to look for them.

rifles. Now our troops are equipped with less-powerful but higher-magazine-capacity semi-automatic pistols and less-powerful but burst-fire and higher-magazine-capacity rifles.

American citizens have traditionally had access to rifles and pistols with more power and magazine capacity than those issued to common soldiers. In keeping with the traditional American view of the militia, the Army's Office of the Director of Civilian Marksmanship has long sold surplus pistols, rifles, and carbines, including semi-automatics, to the public at bargain-basement prices. No one claims that Americans have caused problems with these surplus military small arms. Yet since common soldiers started carrying automatic or burst-fire rifles, American citizens have no longer had access to up-to-date military small arms, and federal law now even restricts their access to semi-automatic variations of these guns. So not only do we have the large professional military and select militia that the Founders feared, but there is a movement afoot to get militarily effective small arms out of civilian hands.

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Big journalism has not examined the implications of these developments, instead treating the Second Amendment as, at best, an anachronism. In a March 1990 column titled "The Second Amendment Gets No Respect," Mike Moore, then editor of *The Quill*, the magazine of the Society of Professional Journalists, wrote that "in 30 years in the business it's hard to imagine a subject...that has inspired more poor reporting and silly editorial commentary." As I've suggested, much of that poor reporting and silly commentary is the result of ignorance. Ted Gest of *U.S. News & World Report* acknowledged in a 1992 *Media Studies Journal* article that few of today's journalists know much about guns. In an article introducing *USA Today*'s extended examination of the gun issue at the end of 1993, Tony Mauro wrote that in his paper's newsroom, "which prides itself on drawing its staff from a cross section of the nation, it was hard to find editors and reporters who had ever pulled a trigger."

But if ignorance explains sloppy reporting and commentary on the gun issue that has been going on for decades, journalists don't seem interested in overcoming that ignorance by learning about guns and the legitimate uses to which they are put by millions of Americans. Moreover, since journalistic misinformation on guns invariably favors the gun prohibitionists, something more than ignorance must be involved.

All but a few leading columnists and editors of major newspapers have taken a strong stand in support of stricter gun controls. Guns are also unpopular among the higher-ups at broadcast-news organizations. Michael Gartner, before he was sacked as president of NBC News over the GM-truck scam, used a guest column in *USA Today* to call for repeal of the Second Amendment.

Journalists have long maintained that they keep their personal views in check when they engage in reporting as opposed to commentary. But some prominent journalists are no longer trying to maintain that fiction when covering the gun issue. Where guns are concerned, it seems, they seek only premise-supporting evidence. And big journalism's working premise is that the battle over gun control pits the American public, its police protectors, and its responsible representatives, aided by neutral researchers and the watchdog press, against the "gun lobby," headed by the NRA and representing no more than the gun industry and other irresponsible vested interests.

Thus in 1989 Bill Peters, correspondent for Los Angeles's ABC-owned station, told the U.S. Senate that "today it is our [journalists'] responsibility—using all the powerful means we have at our disposal...both to inform the public of the danger to society posed by military assault rifles and to help build support for getting rid of them." Gloria Hammond, of *Time*'s editorial office, informed readers who complained of bias in that magazine's July 17, 1989, cover story on guns that "the time for opinions on the dangers of gun availability is long since gone, replaced by overwhelming evidence that it represents a growing threat to public safety."

Thomas Winship, a former editor of the *Boston Globe* who now chairs the Center for Foreign Journalists in Reston, Virginia, called for a newspaper crusade against guns in his April 24, 1993, *Editor & Publisher* column. He urged editors, who he assumed share his anti-gun views, to "investigate the NRA with renewed vigor....Print names of elected officials who take NRA funds. ...Support all forms of gun licensing; in fact all the causes NRA opposes."

Back in 1988, Josh Sugarmann accurately read big journalism. He and his friends did not have to worry that skeptical, hard-hitting reporting would discredit their cause. When it comes to gun control, big journalism is little more than a purveyor of the conventional wisdom among urban sophisticates who have only a selective appreciation for the Bill of Rights. ®

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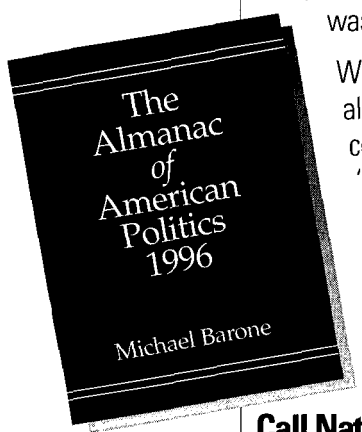

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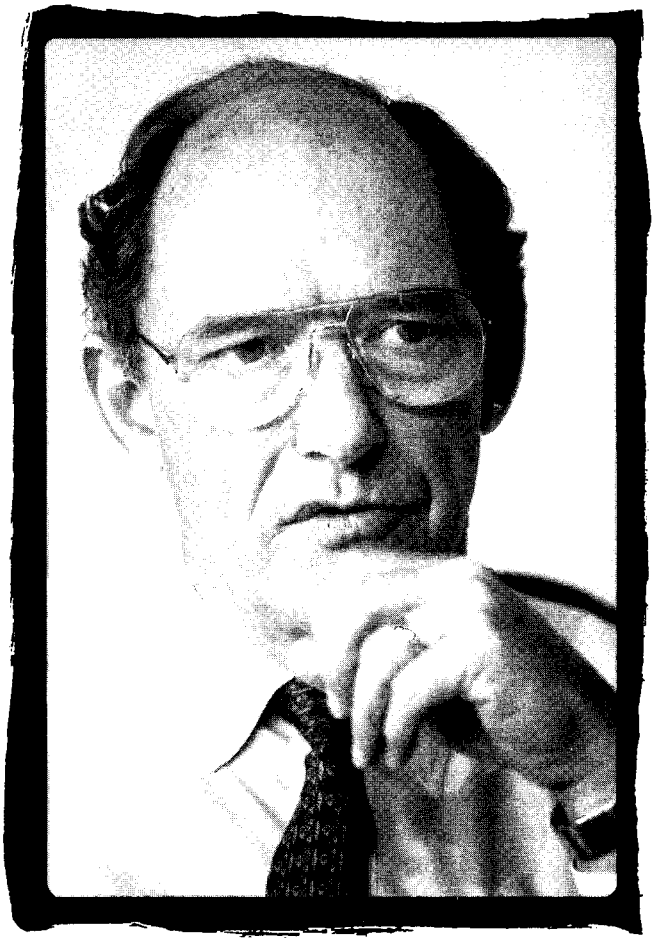


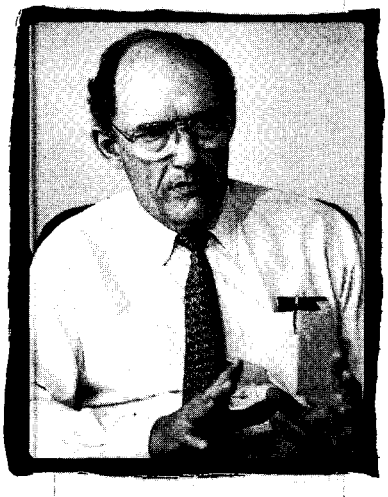
Former Sen. Malcolm Wallop on Republican promises, the limits of federal authority, and the way of the West

PHOTOS: CHAS GEER

Interviewed by
Rick Henderson & William H. Mellor III

In the introduction to *The Almanac of American Politics 1996*, Michael Barone asserts that the election of 1994 signaled that the nation seems to be returning to a "Tocquevillian America, to something resembling the country that French aristocrat Alexis de Tocqueville visited in 1831 and described in his *Democracy in America*. Tocqueville's America was egalitarian, individualistic, decentralized, religious, property-loving, lightly governed."

"The property rights issue resonates all over America. It was in the Contract, and all of the sudden you see both the Senate and some House Republicans beginning to try to make cautious constraints on their erstwhile enthusiasm. I think it's a big mistake."



Ironically, the elected official whose public statements and voting record may have most clearly articulated this new Tocquevillian vision retired in 1994. Republican Malcolm Wallop had been the senior senator from Wyoming and had advanced a principled, limited-government agenda over his three terms.

In the mid-1980s, he argued that the Food and Drug Administration should be stripped of many of its regulatory powers, envisioning an agency that would, like a medical version of Underwriters' Laboratories, endorse high-quality drugs and medical devices but that could not prevent consumers from buying unproven remedies. He was a consistent tax cutter, leading a Senate revolt against George Bush's 1990 budget deal, much to the irritation of then–Minority Leader Bob Dole. And he served as a sounding board for individuals and business owners beaten down by government environmental, safety, and financial regulations.

Wallop may be best known for his views on national security issues, many of which were ridiculed until the Soviet Union imploded. Before Ronald Reagan used the term "evil empire" to describe the former Soviet Union, Wallop regularly denounced the Soviets, saying arms-control treaties dignified communist regimes on the world stage and that the United States should try to topple communist dictators instead. He was an early advocate of strategic defenses and continues to support them enthusiastically. His 1987 book *The Arms Control Delusion* offered what turned out to be an accurate view of the Soviets' aggressive intentions even though the Cold War would soon abruptly end.

Most recently, Wallop served on the Bipartisan Commission on Entitlement and Tax Reform, the group headed by Sens. Bob Kerrey (D-Nebr.) and Jack Danforth (R-Mo.) that was charged with recommending changes in Social Security, Medicare, Medicaid, and federal pensions. When the commission issued a preliminary report in August 1994 spelling out the long-term fiscal shortfalls in Social Security, Wallop refused to endorse it, writing in a letter to Kerrey and Danforth, "I believe that no one is entitled to the earnings of others, and...the first step towards reform should be to dispel the notion that any social welfare spending is automatic and irrevocable." The 104th Congress is now contemplating changes that would terminate the open-ended entitlement status of Medicare and Medicaid.

Wallop briefly contemplated a campaign for the 1996 Republican presidential nomination, but the challenge of fund raising (and Wyoming's tiny base of three electoral votes) ended that quest. Had Wallop remained in the Senate, he undoubtedly would have aligned with such freshmen as Spencer Abraham (Mich.), Rick Santorum (Pa.), and Rod Grams (Minn.), aggressively anti-regulation and skeptical of large-scale social-engineering schemes. But he's on the outside now, overseeing Frontiers of Freedom, an advocacy group he started to promote his issues while his presidential hopes remained alive.

Wallop spends about half his time working for Frontiers, the rest on his ranch in Wyoming. REASON Washington Editor Rick Henderson and William "Chip" Mellor, president of the Institute for Justice, interviewed Wallop in the Arlington, Virginia, office of Frontiers in late June.

Reason: Over the past few years you have been identified as the champion of a number of issues that are suddenly starting to resonate: property rights, reform of the Endangered Species Act, entitlement reforms, national security issues. Where do these issues stand right now?

Malcolm Wallop: They're big issues from which political players are seeming to flinch. The property rights issue resonates all over America. It was in the Contract, and all of the sudden you see both the Senate and some House Republicans beginning to try to make cautious constraints on their erstwhile enthusiasm. I think it's a big mistake.

Reason: Are you suggesting that the "Republican Revolution" has stalled? Are you sounding a death knell for that revolution?

Wallop: No. I really don't think that. Stalled, or stuttered, perhaps. I don't find among the freshman class or others who were working on these issues before that there's any hesitation about where we want to go. If it is a death knell, I think it's the death knell for the leadership.

Reason: In the wake of an overwhelming mandate for dramatically reducing government intrusiveness, we see both the House and the Senate currently debating such proposals as a Constitutional amendment to ban flag burning and national ID cards—issues that would seem to be at best a distraction from the election's mandate. Is this a failure of the leadership, something lacking in the Republican Party, or just a momentary distraction?

Wallop: These *are* distractions, and the worst part is that they are totally anti-Republican distractions. They are not the kinds of issues that Republicans ought to be wrapped around. Repub-

licans ought to be in the trenches opposing them.

We don't need a nation that has national identity cards. It's insanity for a party that believes in freedom to allow some Republicans to seize an agenda that is totally alien to the agenda that was established in the election. My class and above in the Senate is full of people who hear the old political music. Some of them have even said, "What revolution? I didn't see one."

This fall, with the reconciliation of the budget and debt limit, our leadership will be pushed back. If they are not pushed back, the [party's] new members will still be seriously devoted to these issues. And if the new members don't have their ideas accommodated by a major effort on the part of the leadership, then once again you're back to the point that I was talking about a year ago in *National Review* [the emergence of a major third party].

The Ross Perot phenomenon was not about a passion for a man with a squeaky voice and big ears. It was the belief that maybe politics-as-usual could be changed. There is no other explanation for such instantaneous support from 31 percent of the country.

When Ross Perot announced, the Bush people in the Republican Party didn't even remotely understand it. They said, "Well, since Perot said he wasn't going to run, all those votes will come back." They didn't come back. People had been liberated from that connection [to the Republican Party] and they were looking for a party that really had another idea about where government ought to go. Perot never really articulated that idea, but his vote didn't fall.

Republicans forget that we were born out of the ashes of the Whigs, a party in a time very much like this time, that could not take a position on the significant issue of the day—the abolition of slavery. The Whigs and the Democrats were two big-government parties who more or less accommodated each other and were arguing with each other about variations on a theme—which party would be the more kindly owners of slaves. It isn't that different from what the public perceives as the distinction between the Republicans and Democrats today.

Reason: You're a strong supporter of devolution, of decentralizing functions from the federal government down to the state or local level. What is the ultimate end in federalism?

Wallop: The ultimate end is a nation that lies under the concept of the Declaration of Independence. The Declaration of Independence is such an extraordinary statement—it was designed by people skeptical of government, local or national, but in particular national.

Then the Bill of Rights came along. The idea that government was supposed to be empowered by the people runs right through all those first 10 amendments. And the fascinating thing about that is that it's almost an instruction to stay skeptical. Not to believe the government has no place, but to believe that government's only place is the one that is generated by the will of the people, who are citizens of it, not subjects to it.

If the Republicans think that by having stated and even achieved most of the Contract that they are therefore entitled to the acceptance and favor of the American voter, they're crazy. We have a long way to go from the Contract to a government that accepts skepticism as part of its rationale, as part of its basis for governing.

"If the Republicans think that by having stated and even achieved most of the Contract that they are therefore entitled to the acceptance and favor of the American voter, they're crazy. We have a long way to go from the Contract to a government that accepts skepticism as part of its rationale, as part of its basis for governing."

You talked about national identity cards and the terrorism bill. We have made a government that has grown used to viewing us as subjects, has grown used to seeing its role as commanding us.

Reason: Congress has scheduled hearings on federal law-enforcement abuses at Waco and at Ruby Ridge. Could current elected officials or the press learn some lessons from these events?

Wallop: Oh yes. They already have. [FBI director Louis] Freeh didn't demote [former Deputy Director Larry] Potts for any other reason than that these hearings were coming. ABC hasn't run a series of stories of how Waco might have ended in a surrender for any other reason than these hearings were coming.

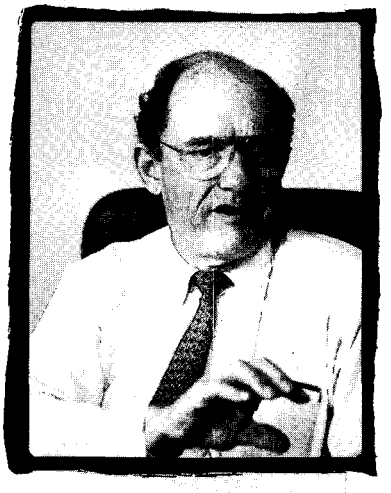
Most Americans are frightened of their government. They're frightened of the IRS, they're frightened of the Federal Communications Commission, or the FBI, or the FAA, or whoever and whatever part of government happens to affect your life. People are actively trying to serve government, lest it take notice of them. And they are resenting it big time.

The people are way ahead of politicians on this. And it's not rednecks, disaffected, disenchanted, angry white males, or militia men. It's ordinary people.

Look at the Endangered Species Act. You have this apparent contradiction: Seventy some percent of people say it's important to somehow maintain a specific species' presence on earth. But if you just ask if species, in general, ought to be preserved, nearly the same percentage of people say that you are entitled to be compen-

sated for it, to have this burden of preservation shared with you by all the American people.

Until people are actually required to face that cost themselves, it's easier to think of property holders as being somebody like Donald Trump or some rancher than it is to think of somebody who owns 2½ acres upon which they were going to build a retirement home.



But the Constitution doesn't distinguish between the stature of property holders. I was in trouble over the last couple of years of my tenure in the Senate because I was against the idea that the federal government would take the water rights of the Church Universal and Triumphant in Yellowstone to satisfy the public's natural desire to protect the geothermal features of Yellowstone. I was saying that it was up to Montana to determine whether under Montana law the church had a valid existing water right. If it did, and if the government said the church couldn't use the water because we want to protect creatures, fine, it's the government's obligation to buy the water rights.

I have absolutely no doubt that if that landowner had been named Steven Jones, the issue would have been very clear—of course the government has an obligation. The Church Universal and Triumphant was sort of an apocalyptic outfit and therefore not popular.

The previous owner of the water rights was Malcolm Forbes. I'm not even certain he would have had a comfortable political reaction, probably more comfortable than the Church Universal and Triumphant, but people would say, "Hell, he could afford it."

Reason: The 1994 and the '95 crime bills have centralized law-enforcement powers, contradicting the Contract's decentralist message. Might the Republicans reconsider their tendencies to nationalize law enforcement?

Wallop: Republicans are in a constant quandary. They believe in the security of their citizens, and they believe in the suppression of crime. And they live in Washington where crime is visible and the only way they can do anything about it there is through a federal police force. But they seem to have lost the notion of what a federal government is all about.

The idea that we would sit here and mandate the state penal code in order for states to qualify for funds for prison building and the idea of hiring 100,000 new police officers—these things don't make sense. Ruby Ridge and Waco may help the public relocate their ground. That's what happens when you have a national police force that is acting as a local police force—and in each instance they were.

"Most Americans are frightened of their government. They're frightened of the IRS, they're frightened of the Federal Communications Commission, or the FBI, or the FAA, or whoever and whatever part of government happens to affect your life. People are actively trying to serve government, lest it take notice of them. And they are resenting it big time."

Reason: In the areas of illegal immigration and drug enforcement, the federal government is considering a much broader use of the RICO law and asset forfeiture. Republicans—with no resistance from Democrats—seem to be absolutely determined to expand the use of both these law-enforcement tools. Is there any chance of getting them reined in?

Wallop: Well, there'd better be. Or again, I sense that here comes a third party. It's very easy for the Pat Buchanans and others of this world to fan the flames of anxiety of citizens about illegal immigration. And it's very easy for the Clinton people to propose and the Republicans to embrace the idea that the military might become one of the biggest assets we know of to address these issues.

I'm a big supporter of immigration. Republicans [make a mistake] when they think they're going to protect jobs by eliminating illegal or legal immigration. It is the obligation of the United States to protect its borders but it's far more important for that protection to come from a force that is organized for that specific purpose, namely the INS.

Reason: How about the drug war? In particular, abuses of the asset-forfeiture laws have real property rights implications.

Wallop: They do, and I'll tell you—it was all right, in the minds of most Americans, to use RICO and asset forfeiture if they thought you were seizing the property of some Colombian. But when HUD starts using RICO as a challenge to Americans who disagree with it, then the forfeiture laws begin to take on another dimension. My guess is you cannot define them so specifically as to apply only to foreign drug lords.

When you've seen RICO-like provisions becoming part of the terrorist bill when we don't have a terrorist problem then it's time for Republicans and civil libertarians to say, "What the hell are you doing to the Constitution?"

Reason: Let's talk about national security issues. Bosnia is collapsing as we speak, Republicans are clearly skeptical about direct intervention there. What should the U.S. response be?

Wallop: On the one hand you have the president and leaders of both parties expressing anxieties about pictures on television and the news of ethnic cleansing and on the other hand you have a sitting Democrat president and the previous Republican president unwilling to put American

concepts in play, [instead] using the U.N. as an excuse for a lack of national policy.

The best thing that has happened is that we have validated the idea that there's no such thing as a multinational force or purpose unless one of the group is ready, willing, and able to do it all by itself. The utter incompetence of the U.N. is literally incomprehensible.

Reason: Should the United States withdraw from the United Nations?

Wallop: Yeah. Certainly for any security reasons. We might want to stay in it for the World Health Organization or other reasons not related to security. But the U.N. is becoming a very articulate tool for national decline. We can't do anything without their permission, yet we are unwilling to have them command our troops, yet we are willing to commit our prestige to their judgment. And they can't find a way to act on their own, when their own prestige has been threatened by lack of judgment or an inability to make decisions.

Reason: What general principles do you believe justify military involvement abroad?

Wallop: Historically, this has been a country that operated more surely when it had a doctrine—whether it was the Monroe Doctrine or the containment doctrine or any number of other kinds of doctrines—and very unsurely when it didn't have one or had renounced one.

Doctrines provide an architecture for both Republican and Democrat presidents to carry out policies. They weren't the same from Truman to Kennedy. Eisenhower, Nixon, Ford—all of them had a little different idea of what containment was about, but as a general principle, containment of communism was something that appealed to the American people and was the basis upon which a military and foreign policy structure could be invoked.

So with the end of the Cold War, it became increasingly obvious that there was no basis upon which any decision was being made, not in the White House, and certainly because of that, not in the Congress. The defense budget became increasingly a function of the defense of the local economy and had nothing to do with any military purpose.

In 1990, well before the Gulf War, I went to ask President Bush to put together a new American doctrine. [National Security Adviser Brent] Scowcroft was there and I was very skeptically received—even with some sort of cynical amusement. They said containment had been necessary because the Soviets had exploded a nuclear bomb, or were about to get the hydrogen bomb, but nothing like that is going on now.

In the few short minutes before I was laughed out of there, I tried to explain that America needed to define its interests. I don't think they're very difficult to define. The first, foremost obligation is defense of the homeland. No problem there, I think everybody agrees on that.

We are a trading nation. We need access to our markets and we need for those markets to be reasonably secured. If they're not, we can't trade.

We are a communicating nation which needs access to space, access to the seas.

We are a studying nation. Scholarship from science is important to the whole world and those people need to be able to be safe and secure in what they do.

Our hemisphere is quite important. If there's not security in our hemisphere, there's not security in the homeland.

Finally we are a nation with some conscience. It means alliances are extremely important when they're based on a national interest. We have to have the ability to sustain our presence within those alliances...

"Ruby Ridge and Waco may help the public relocate their ground. That's what happens when you have a national police force that is acting as *a local* police force—and in each instance they were."

Reason: You mean like NATO?

Wallop: ...*particularly* like NATO, but not an expanded NATO that has no idea of what its role is in the world. The idea that Russia would be part of NATO is to say that NATO doesn't have any relevance to us and our national interest anymore. If NATO wants to have a security arrangement with Russia, that's a little different thing than having Russia part of NATO.

The certain, powerful presence of the United States provides an enormous economic lever to us. When I said this the second time to Bush in late June or early July of '92, he sort of laughed at it, and said, "I don't want to be the world's policeman." I said, "We don't have to be the world's policeman, but how would you like to live in a world with *no* policeman?"

Reason: There are clear differences in the lifestyles of the Eastern and Western United States. A notion of rugged individualism still characterizes life in the West. How much of that is myth and how much reality?

Wallop: It's not all myth by any stretch of the imagination. [Interior Secretary Bruce] Babbitt is an urbanized Westerner, and he makes the mistake of calling the West the most urbanized part of America. Well, it is. If you look at the map more inhabitants of the West live in its urban centers than in the urban centers of Connecticut, but that's partly because you can't live in all the West.

But what Babbitt doesn't understand is that when anybody moves to the West, the first thing you do is buy a pair of cowboy boots. You identify with what you believe the West to be. The West doesn't have to sell itself as a haven for rugged individualists.

The West by and large views itself in tension with the federal government, because of the federal [ownership of] land. And therefore, far more skeptical of the presence of government than people here [in the East] who don't live with that tension.

For most average citizens of Maryland, the idea that the federal government says you can only drive 55 miles an hour is not a whole lot different from a decision their own government would make anywhere in the state. But when you have roads in the West that are 26 miles without a kink in them, nobody believes that their local government [would mandate a 55 mile-per-hour speed limit]. All of the government's presence in the West, and not just with respect to the land, is far more visible and a far more oppressive part of the ordinary citizen's experience than it is here.

Reason: Thanks to, among other things, telecommuting, which allows people to live anywhere they want, people are leaving the cities and suburbs of the East and moving to the West. Can the fragile ecology of the West accommodate such massive migration? And will these newcomers indelibly alter the indigenous culture of the West?

Wallop: The presence of the federal government is going to make that [migration] extremely difficult. And the more you have people like Babbitt in there, the more difficult it's going to be.

Babbitt is trying to make use of the public lands less and less economic for traditional purposes, and more and more a sort of playground and park for visitors. The private lands then begin to have less and less economic value on their own, and therefore will have to be sold in smaller and smaller parcels.

What Babbitt is doing is the worst possible thing for the environment and the West. We have two options: Go back to a full-blown view of multiple use or privatize the federal lands. One of the early concepts of public land was that it wouldn't be just one big ranch or one big mining operation or mineral or timber operation—there would have to be an economic mix that could provide some economic resiliency, assuming that not every commodity, not every use, would be available at the same time. We had a breadth of economic uses. You can't do that if you assume that any commercial use of federal lands is an affront to the recreational users of it.

My preference would be to privatize. Some people say you'll lose hunting privileges, but the federal government isn't going to be a bit more hospitable to recreational users than the private guy who might make a little money off this person because the private owner would give them a better experience anyway.

Reason: Social Security is a major project of Frontiers of Freedom. What are you doing?

Wallop: We're taking on Social Security as a property rights issue. We figure that every single American has an absolute property right interest in the fruits of his or her own labor. What I work for should be my property.

Along comes the federal government and takes 15 1/3 percent of that laborer's fruit and promises that should you die prematurely, the government is happy to be the beneficiary. Should you live to the time of retirement, you will receive benefits which have not yet been described, at an age which has not yet been guaranteed, and taxed at a level which has not yet been identified.

You have no say in how it's invested or where it goes. You can't leave it to your widow, you can't leave it to your children, you can't retire early and still have the fruits of your labor. I'll crawl off my libertarian perch far enough to say that we [have] to make savings an obligation, but the savings are yours. You will have a couple of dozen options as to how to invest that or where to save it, but your limit of earnings will be the success of your investments.

Reason: Will Social Security privatization becomes a bigger issue, say, in three or four years, just as tax reform is now?

Wallop: It has to because no tax reform is of any consequence unless it also deals with the payroll tax. You can't get rid of the IRS as [House Ways and Means Committee Chairman Bill] Archer or others want to do without getting rid of the payroll tax.

There is no more unfair tax right now than Social Security. It takes 15 1/3 percent off of the wages of the poorest earner in this country. And privatization would make each American a shareholder in their economy, and interested in where it's going. Think of what the country could do with this huge infusion of capital that was no longer in the hands of government and in the hands of people creating jobs. And we could get over this goofy idea that growth is an economic detriment.

Reason: Thank you. ®

"Every single American has an absolute property right interest in the fruits of his or her own labor. What I work for should be my property. Along comes the federal government and takes 15 1/3 percent of that laborer's fruit and promises that should you die prematurely, the government is happy to be the beneficiary."

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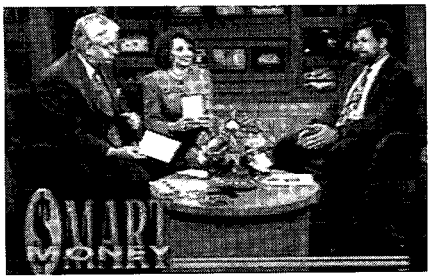

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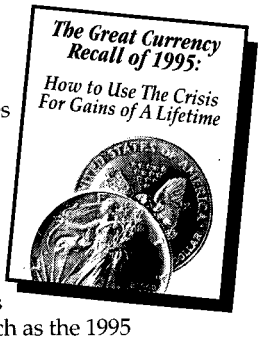

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Attorneys' Fleece

By Mark S. Pulliam

Some potential dangers of "loser-pays"

IF A LAWYER HIRED TO HANDLE a $50,000 damage claim won and then submitted a bill to his client for $1 million, the client would be entitled to rip up the bill and report the lawyer to disciplinary authorities. Everyone would agree that such an excessive fee is patently unreasonable, even unconscionable. Unless, of course, the attorneys' fees are not being paid by the client, but are being awarded by the court against the losing party, pursuant to a fee-shifting statute. In that case, the lawyer might get not only the $1 million he asked for, but a bonus of $650,000 and an additional recovery of $200,000 in fees for time spent arguing over fees.

It happened. In a little-noted finale to the widely publicized sexual harassment case *Weeks v. Baker & McKenzie*, the trial court in San Francisco awarded Rena Weeks $1.8 million in attorneys' fees—1.7 times the actual hours her lawyers spent on the case multiplied by a prevailing hourly rate—even though the jury awarded her only $50,000 in compensatory damages. (The $6.9 million punitive damages verdict, reduced by the judge to $3,725,000, is on appeal.) In sexual harassment cases, as with other types of employment discrimination suits, the prevailing party can recover reasonable attorneys' fees from the losing party.

When Congress and state legislatures began passing civil rights statutes in the 1960s—prohibiting discrimination on the basis of race, sex, and other characteristics—they typically included a provision allowing the court to award reasonable attorneys' fees to the prevailing party. Until recently, many civil rights laws limited the amount of monetary damages recoverable. Therefore, in the past, the prospect of recovering attorneys' fees created an arguably needed incentive for litigants primarily interested in obtaining non-monetary relief, such as reinstatement to their jobs or declaratory or injunctive relief.

THE NUMBER AND SCOPE OF CIVIL RIGHTS statutes have proliferated greatly since the 1960s, as have the types and amount of damages recoverable in such actions. Not surprisingly, the amount of civil rights litigation has greatly increased as well. You can now win attorneys' fees in many types of lawsuits—employment discrimination, sexual harassment, police brutality, and many types of litigation alleging deprivation of constitutional rights.

Fee-shifting statutes generally draw no distinction between winning plaintiffs and winning defendants. But courts, as a matter of policy, have decided that prevailing plaintiffs are nearly always entitled to recover their attorneys' fees, while prevailing defendants cannot recover unless the lawsuits were frivolous, unreasonable, or groundless. Winning isn't enough.

In addition to specific fee-shifting statutes, sometimes attorneys' fees can be awarded to a prevailing party pursuant to a broader "private attorney general" statute when a lawsuit results in a significant benefit to the general public. In *Weeks*, the court invoked both types of statutes.

The court in *Weeks* asserted without discussion that "the amount of monetary damages recovered does not fully reflect the value to society of the plaintiff's victory." (How a seven-figure award to a legal secretary who endured less than a month of abuse from an obnoxious boss creates value to society was never explained.) The judge would have awarded an even higher multiplier of the already disproportionate attorneys' fees but for the punitive damage windfall Weeks had previously received.

The trial court stated, "[Rena Weeks] had substantial difficulty in securing counsel to handle her case. She was turned down by seven attorneys before obtaining representation by [trial counsel]. Plaintiff's counsel took the case on a fully contingent basis, and expended well over $1 million dollars [sic] in time and expenses on a case in which, as plaintiff's counsel puts it, '[a]nticipated compensatory damages were not necessarily substantial, and the availability of punitive damages was purely speculative.'...Without enhancement of their normal, non-contingent hourly rate, attorneys would have insufficient incentive to take cases such as plaintiff's."

The trial judge also commented, with no apparent irony, that "[Rena Weeks'] prospects of recovering...anything close to $1 million were dim until the very end." There you have it. The litigation lottery our civil justice system has become generates higher stakes as courts award attorneys' fees far in excess of the damages recovered or the hours actually spent.

ABSENT A FEE-SHIFTING STATUTE OR A contractual provision, the general rule in the United States is that each party to a lawsuit bears its own attorneys' fees,

CHIP BOK

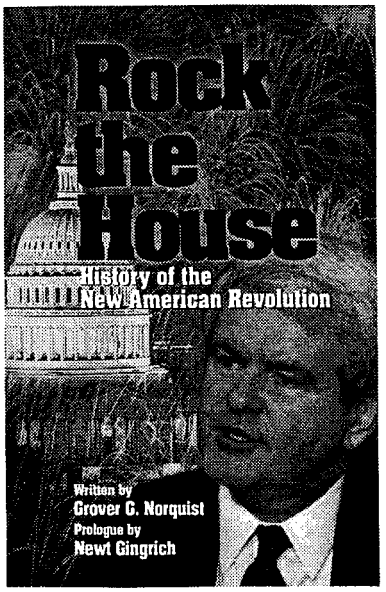
win or lose. This is the so-called American rule. Because of the potential for unfairness and abuse inherent in allowing a litigant to impose tremendous, unrecoverable expenses on his opponent for tactical reasons (such as to extort an out-of-court settlement less than the anticipated cost of defense), proponents of civil justice reform often advocate a "loser-pays" approach to attorneys' fees, sometimes called the "English rule." (See "Civil Suits," June.)

The result of the *Weeks* case shows a possible weakness in such plans. While

In a legal system choked with a growing volume of lawsuits, courts are overtly and consciously encouraging litigation.

the amount of attorneys' fees awarded in the *Weeks* case is extraordinary, the principle is unfortunately quite routine. In cases now subject to fee-shifting statutes, courts regularly award litigants attorneys' fees well in excess of those contemplated by the contingent-fee arrangement with their lawyers, well in excess of their actual damages, and even well in excess of the fee that would have been appropriate based on the actual hours worked at a market rate. Such fees would never be charged or paid in a voluntary transaction between an attorney and client. But when courts award fees to prevailing parties, they are not trying to replicate the market; they are advancing their own vision of public policy.

Even though existing fee-shifting statutes allow recovery of only "reasonable" attorneys' fees, courts eschew any restriction based on the degree of success or even the amount of work expended. Courts in essence disregard the concept of reasonableness in awarding attorneys' fees. Believe it or not, in a legal system choked with a growing volume of lawsuits, courts are overtly and consciously encouraging litigation. The judiciary's



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prevailing attitude is that litigation—a bane to most of society—promotes the public interest. Hence, litigation is rewarded, and the more speculative the case, the greater the reward.

For example, in a recent pregnancy discrimination lawsuit against a California employer too small to be covered by the California discrimination statute, the court nevertheless allowed the plaintiff to recover $20,226 in damages on the theory that pregnancy discrimination is already forbidden by the state constitution, which prohibits discrimination based on sex. Leave aside questions of whether *pregnancy* and *sex* are interchangeable terms, or why the legislature felt it necessary to enact a statute limited to large employers to create a remedy already universally available under the state constitution. Consider only that the trial court awarded the plaintiff another $30,000 in attorneys' fees to be paid by the hapless employer (in addition to the employer's own attorneys' fees).

On July 20, an appellate court upheld both the verdict and the fee award in *Badih v. Myers*, agreeing with the trial court that an individual suing a small employer to receive legal protection denied by the legislature confers a significant benefit on the general public. That the attorneys' fees exceeded the damages elicited nary a comment.

NOT TO BE OUTDONE, THE NEW JERSEY Supreme Court ruled on July 24 in *Szczepanski v. Newcomb Medical Center, Inc.* that contingent-fee lawyers in that state are entitled to an "enhancement" of up to double the actual hours spent on an employment discrimination case, to reflect the risk of nonpayment if the case were unsuccessful. (I thought that was the whole point of taking a case on a *contingent* fee basis.) The more marginal the case, the greater the risk and, hence, the greater the enhancement. Thus, the lucky litigant who prevails on a frivolous case will be entitled to a greater "enhancement" of attorneys' fees than a prevailing party with a strong case. The New Jersey case, which involved sexual harassment, resulted in a damage award of $115,000 after a month-long trial. The successful plaintiff's attorney claimed that his work on the case—$135,360 at the prevailing hourly rate—was worth more than his client's damages. Does a legal system make sense in which the attorneys are *supposed* to get more than the "injured" party?

The attorney then requested twice that amount—$270,720—from the defendant to compensate for the attorney's risk of failure. The trial court quite sensibly rejected this claim on the ground that the contingent-fee agreement the attorney had with his client set the upper limit of a reasonable fee. A unanimous New Jersey Supreme Court disagreed. Neither the contingent-fee agreement nor the amount of damages awarded can limit the recovery of attorneys' fees. When courts determine reasonable attorneys' fees, the sky is the limit.

In a little-noted finale to the sexual harassment case *Weeks v. Baker & McKenzie*, the trial court awarded Rena Weeks $1.8 million in attorneys' fees—1.7 times the actual hours her lawyers spent on the case multiplied by a prevailing hourly rate—even though the jury awarded her only $50,000 in compensatory damages.

ALL ECONOMIC ACTIVITY RESPONDS TO INcentives, and litigation is no exception. Even without fee-shifting statutes, there are plenty of contingent-fee wildcatters willing to prospect for damages by filing speculative lawsuits. When courts confer on prevailing plaintiffs the additional windfall of exorbitant attorneys' fees, while at the same time denying fees to prevailing defendants unless the cases were utterly groundless, they are unabashedly encouraging unnecessary litigation by rewarding the filing of weak claims and encouraging the excessive litigation of *all* claims. "Enhancements" and "multipliers" explicitly incentivize lawsuits.

Webster's defines *barratry* as "the practice of exciting and encouraging or maintaining lawsuits or quarrels: the persistent incitement of litigation." The judiciary used to punish barratry. Now the courts are engaged in it. Is it any wonder we are drowning in a flood of lawsuits?

Bad experiences with existing fee-shifting statutes don't mean that loser-pays doesn't have merit. But those experiences teach two important lessons, both of which must be heeded for loser-pays to represent an improvement over the status quo. First, the standard for awarding fees must be applied evenhandedly, without (as now) preference for prevailing plaintiffs over prevailing defendants. The existing "American rule" is preferable to one-sided loser-pays.

Second, the existing approach for determining reasonable attorneys' fees must be abandoned. The attorneys' fees prevailing parties are allowed to recover must be strictly limited, and in the case of a prevailing plaintiff, recoverable fees should ordinarily be an amount significantly *less* than the damages recovered, with no enhancements or multipliers. Even in the rare case in which the legal interest being vindicated is more substantial than the amount of damages (for example, a title dispute), recoverable fees must bear a reasonable relationship to damages.

The standard should be guided by what fee would be reasonable in a transaction between an uncoerced buyer and seller of legal services. Allowing recovery of unlimited attorneys' fees (as courts now do) in a loser-pays scheme would be a license for excessive litigation and defeat the salutary purpose of the English rule. ®

Mark S. Pulliam, an attorney in private practice, serves on the board of San Diego County Citizens Against Lawsuit Abuse.

Suffer the Missing Children?

By Tadd Wilson

Taxpayer dollars continue to disappear while children don't.

AKRON BEACON JOURNAL
OH IF WE WERE SPENDING MORE TIME OUTDOORS AT THE PLAYGROUND WE'D JUST HAVE TO WORRY ABOUT ALL THE PERVERTS.

On April 18, 1993, Attorney General Janet Reno approved the ill-fated federal raid in Waco, Texas, apparently because an unidentified FBI agent told her that "the Branch Davidians were beating babies," Reno said. More than 80 people, including 22 children, were killed during the raid.

Two years later, Reno wants to help the children again, this time by forming a new federal task force to "coordinate the delivery of federal services to missing children and their families." Those services include a national hotline, FBI investigations, searches conducted by U.S. Marshals and Customs officers, and parcel inspection by the U.S. Postal Service. The task force is composed of administrators from the FBI, the DEA, the Secret Service, the Customs Service, Health and Human Services, and the Defense Department, as well as several Justice Department offices. The vice president of National Center for Missing and Exploited Children (NCMEC), co-host of the attorney general's announcement, will also sit on the task force.

While any effort on the part of government to improve performance and allocate resources more efficiently must be applauded, the figures used to justify the extension of the federal government's reach in law enforcement are questionable at best. The Department of Justice estimates that "440,000 children are lost or otherwise missing each year, including children abducted by a stranger or acquaintance; children abducted by a parent or family member...; and children who are abandoned—thrown away—or told to leave home." It also says that "450,000 children and young people run away from home every year." However, the attorney general's figures describe an epidemic that doesn't exist.

The history of missing children as a public issue is marked by inflated figures, often promulgated by organizations with an interest in scaring the public. Ten years ago, at the height of the missing children scare, *The Denver Post* ran an article detailing how "the inflated numbers themselves are damaging the lives of millions of parents, affecting how they feel about their children's safety and what they should teach their children about the society they live in." The *Post* also quoted family relations psychologist John McInvoy explaining how artificially inflated numbers are "making children paranoid, too." McInvoy continued, "[T]here's a difference between healthy respect and caution and what's going on now. It's not healthy anymore." In the decade since the *Post* article, healthy respect and reasonable caution have still not emerged.

The Justice Department's quotation of questionable numbers is not an isolated incident. Every day, agencies and advocacy groups seeking political leverage or financial rewards present exaggerated evidence in stating their cases. The organizations concerned with locating and returning missing children to their families are no exception, and provide an excellent microcosmic view of the phenomenon.

A Justice Department study conducted by David Finkelhor of the University of New Hampshire shows that the attorney general's tally of 440,000 missing includes children missing for a "few minutes to overnight." According to an analysis of the Justice Department figures by the Statistical Assessment Service, an independent organization that examines research findings, 19 percent of the "lost" children misunderstood parental instructions; another 12 percent forgot the time. In all, 73 percent of those lost were home within 24 hours. Among runaways, STATS reports, half returned home within two days, and 73 percent of parents were aware of their child's location.

Those most closely associated with missing children also dispute the attorney general's claims. Once a supporter of inflated figures, Louis McCagg, director of Child Find, the nation's oldest missing children organization, estimates that 600 children annually are the victims of stranger abduction, not 4,600 as the Justice Department maintains. Even if 440,000 children were missing each year, only a fraction of these cases would fall under federal jurisdiction. "It's sad to say," says John Gill, director of Children's Rights of New York, "but some organizations are exaggerating the figures to make their cause seem more urgent."

Indeed, certain groups represented on the federal task force stand to gain from spreading the perception that child abduc-

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tions continue to be a national epidemic deserving federal attention. The NCMEC, a prominent task force member, was founded in 1984 amid the hysteria created by a series of highly publicized child abductions, including the Adam Walsh case. The NCMEC offers a national computer network, access to the FBI's "missing person" and "wanted person" files, public service announcements, photos, posters, and training for law enforcement officers. The center also provides referrals to 50 nonprofit organizations that fulfill certain national standards. And, working in conjunction with private corporations such as Kmart and Polaroid, the NCMEC has provided parents with Kidcare passports that include a child's photo, descriptive information, and safety tips.

Ernie Allen, president of the NCMEC, notes that of the 800,000 cases of missing children occurring each year, 99 percent are resolved successfully by state and local police. Allen says that while child abductions are a serious problem, parents and children "don't need to be paralyzed by fear."

Nonetheless, the NCMEC itself has a history of inflating its figures on child abductions. A 1985 center brochure, for example, reports that at least 3,000 people are buried unidentified each year, and that "hundreds of these unfortunates are children." However, the College of American Pathologists reports that 200 unidentified children, dead from all causes including accident and disease, are buried annually.

The same brochure claims that one in four female children and one in 10 male children will be raped or sexually assaulted by the time they reach adulthood. The FBI's annual "Population-at-Risk Rates and Selected Crime Indicators" shows that in 1985, the rate of forcible rapes and rape attempts was 72.3 per 100,000 women of all ages. Without correcting for same-victim incidents and age, the FBI numbers yield a maximum rate of 1,300 per 100,000 women for the first 18 years of life (1.3 in 1,000 by adulthood), with male numbers considerably lower. A public affairs spokesperson for the NCMEC said that the center does not collect such information, nor has it ever been responsible for collecting national statistics.

Nor did the center's use of misleading statistics end a decade ago. In conjunction with its affiliate, the Adam Walsh Child Resource Center, the NCMEC has claimed that as many as 50,000 stranger abductions occur each year, more than 10 times the Justice Department's own questionable estimates. Incredibly, this figure would yield a rate of three disappearances per state per day. The center currently offers a broad scope of estimates, ranging from 4,600 to 114,600.

Only 515 stranger abduction cases have been handled by the National Center for Missing and Exploited Children since 1990, 3.1 percent of its caseload.

The disparity among the estimates is due to controversy over the definition of "abduction." In the Justice Department's 1990 study, counting all *attempted* stranger abductions as "abducted children" yields a total of 114,600, while using the legal definition of abduction yields 4,600. Though children ages 4–11 are the most common targets of attempted abductions, 50 percent of all actual victims are age 12 or older.

Also, since 1986, the NCMEC has sought to have old crimes reclassified as stranger abductions, including classifying "voluntarily missing" teenage runaways as "missing children." In 1986, 75 percent of the center's "successful recoveries" were runaway teens. At the same time, the center hired lawyers to sue other missing-children organizations such as Children's Rights of New York for contesting their figures, though the center now says it has a "terrific working relationship with the runaway community."

Since the beginning of 1990, the NCMEC has handled 16,644 cases. Of these, runaways accounted for 10,280, while family abductions made up another 5,271. In all, these cases account for 93.4 percent of the center's activities in this decade. Only 515 (100 per year) stranger abduction cases have been handled by the NCMEC since 1990, 3.1 percent of its caseload. Ninety-four percent of the NCMEC's successful recoveries are runaways and family abductions; 3 percent are stranger abductions. Of all the cases NCMEC has handled since 1984, 5,337 remain open. Of these currently active cases, runaways and family abductions account for 84.8 percent, while stranger abductions currently account for 6.7 percent of the NCMEC's active caseload.

However, the center contends that runaways are missing children. NCMEC president Allen maintains that specific criteria for NCMEC cases are set up by Congress and the Justice Department. "We have no control," Allen says, citing guidelines which state that an "endangered runaway" is one who has been on the street more than 30 days, is less than 13 years of age, is prescription-drug dependent, or is in the company of someone considered a threat. According to Allen, these are not just "normal, routine runaways."

The center claims a 76 percent recovery rate in the few stranger abduction cases it does handle. However, 27 percent of the 391 listed as recovered between January 1, 1990 and June 30, 1995 have been found dead, yielding a live recovery rate of 55.3 percent. Of those lost, injured, or otherwise missing, the live recovery rate was 48 percent.

Bill Treanor, executive director of the American Youth Work Center, testified before the House Subcommittee on Human Resources two years after the NCMEC's 1984 creation that "the truth is that the Justice Department's NCMEC has a desperate supply problem—an acute shortage of stranger-abducted children. Desperate to validate the raison d'être of the NCMEC, its leadership is currently engaged in an irresponsible effort to falsely build up the number of cases of stranger-abducted children." Treanor attacked the

NCMEC and its federally funded allies for trying to "put the private organizations out of business," quoting "one embittered director of a legitimate private, volunteer organization" as asking: "Has the NCMEC and the Office of Juvenile Justice become the 'national center for exploiting missing children?'" NCMEC president Allen responds that Treanor "misses the context of what was set up. The intent of the effort was to create a national resource."

ALTHOUGH THE NCMEC HAS BACKED off some of its mid-'80s scare tactics, it still responds to clear incentives to make the missing children problem appear as large as possible. First, while the NCMEC is a "private, nonprofit" organization, its existence is federally mandated by the Missing Children Assistance Act of 1984. The center works closely with the Justice Department, the Customs Service, the U.S. Postal Inspection Service, and other government agencies, and has been described by Treanor as a "wholly-owned and controlled subsidiary" of the Office of Juvenile Justice.

Though the center maintains its official status as a private organization, it receives $3 million annually, nearly half (45 percent) of its budget, via a grant from the Department of Health and Human Services. The center's funding depends upon its political appeal in Congress and appearance of necessity to the public: High numbers of missing children seem to justify the center's continued funding with federal tax dollars. Allen says that the center's melding of private sector know-how and public sector information is a "model Congress should look at for solving lots of problems."

Second, the center is associated with several for-profit private firms seeking to capitalize on the missing children problem. In August 1994, Preferred Contingency Insurance Services (PCIS), a Beverly Hills insurance company, began to offer non-custodial child abduction coverage, underwritten by Lloyds of London. The center, along with Paul Chamberlain International, a team of former FBI agents recognized as leaders in crisis negotiation and abduction investigation, worked closely with Preferred Contingency to develop the policy. Through a special arrangement with PCIS, the center receives 2.5 percent of the gross premiums collected. Coverage up to $100,000 can be purchased, and the minimum premium is $5,000. Overestimated figures and public insecurity are very powerful means of inflating demand for such services.

Treanor maintains that "groups such as Child Find, Contact Center, and the National Child Safety Council can do the job better, cheaper, and without the kind of nauseating self-promotion campaign which has become the number one priority of the NCMEC." However, according to Allen, prior to 1984, there was "no mechanism for quick dissemination of information" concerning missing and exploited children. Allen defends the existence of a centralized national center, saying that there is a pressing need for "greater uniformity in response" among the 17,000 law-enforcement agencies spread throughout "50 states that act as 50 different countries."

The attorney general's tally of "440,000 children...lost or otherwise missing each year" includes children missing from a few minutes to overnight, 19 percent of whom misunderstood parental instructions and 12 percent of whom forgot the time.

EFFICIENCY AND TAXPAYER INTERESTS ARE not the only objections to some programs of the NCMEC and related organizations. Private access to FBI records raises serious questions for privacy rights, and though Allen emphatically denies the formation of a national database, centralization of information and technology brings such a possibility closer to realization. Moreover, Allen favors a policy of requiring polygraph tests for parents reporting missing children, to avoid incidents such as the Susan Smith case.

The effects of the first wave of hysteria in the 1980s were immediately obvious. Renowned child doctor Benjamin Spock, a strong opponent of ID programs, maintained that the emotional trauma resulting from fingerprinting far outweighs any value that might come from the identification effort. In a 1985 *Denver Post* interview, Spock said that children understand that fingerprints are used to identify the victims of violent death, and that being fingerprinted gives them the impression that "children are being abducted all the time and that this child may be next." Nevertheless, state and local police (150,000 of whom have received "free" training from the NCMEC and the Justice Department) have conducted identification programs ranging from fingerprinting to placing serial numbers on children's teeth for bodily identification in the event of abduction and murder.

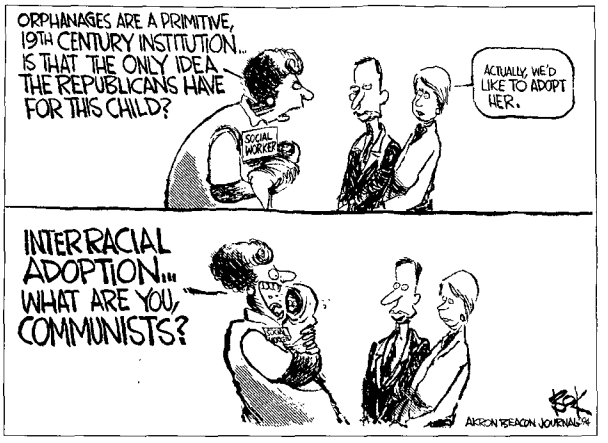
In addition to the immediate psychological trauma they inflict on individuals, fear-inducing numbers also have implications for society as a whole. Earlier this year after police came to his child's elementary school to encourage dental IDs, University of Texas criminologist Mark Warr responded, "Now what in the hell are we doing to the children of the United States, teaching them something like that? The probability of being abducted and murdered is less than a million to one, literally. And yet we're scaring the hell out of thousands and thousands of our kids. What happens is we end up with a society in which nobody trusts each other."

Unfortunately, after 10 years of research debunking the child-abduction hysteria, scare tactics still work. ®

Tadd Wilson is a senior at University of North Carolina, Chapel Hill. He was a Charles Koch Foundation intern in REASON's Washington office.

Adopting Racism

By Nina Shokraii


ORPHANAGES ARE A PRIMITIVE, 19TH CENTURY INSTITUTION... IS THAT THE ONLY IDEA THE REPUBLICANS HAVE FOR THIS CHILD?
SOCIAL WORKER
ACTUALLY, WE'D LIKE TO ADOPT HER.
INTERRACIAL ADOPTION... WHAT ARE YOU, COMMUNISTS?
AKRON BEACON JOURNAL

The most pernicious racial set-aside

When Matthew O. was only a few days old, doctors at the Texas hospital where he was born begged workers at the Texas Department of Protective and Regulatory Services (DPRS)—the state agency responsible for neglected and abandoned children—to find him a home. Born with syphilis and addicted to crack cocaine, Matthew had no chance of returning home with his mother, who had a history of abandoning her children to the state.

When he was nine days old, Matthew found a home with Lou Ann and Scott Mullen, a veteran foster family in excellent standing with DPRS. The Mullens spent long and sleepless nights helping Matthew overcome his body's addiction and fell in love with him along the way. Whenever they would ask DPRS workers about adopting him, they were told there was "no way" because Matthew is black and would go to a black home—despite a state statute prohibiting DPRS from using race to delay, deny, or otherwise discriminate in adoption placement.

The Mullens are a multiracial family. Scott, who is white, and Lou Ann, who is Native American, were stunned that race stood in the way of giving Matthew a permanent home. In their eight years of foster parenting, they had provided a home for 22 children, 14 of whom were African American. (In fact, through a private agency they had adopted a biracial former foster child.) DPRS had praised them for their outstanding ability to parent children of all races and ethnic backgrounds.

DPRS had no problem leaving Matthew with the Mullens for nearly two years, but when it came to placing him for adoption, Matthew was suddenly removed from his home and placed with a black family. The family had also agreed to adopt Matthew's brother, 6-year-old Joseph, who had spent most of his life in the state's "care." Within seven weeks, this family had a change of heart and gave both boys back to DPRS. Instead of putting them with the Mullens, DPRS sent the boys to yet another group of strangers, a black foster family. When Lou Ann and Scott told DPRS they wanted to adopt both boys, they were told no—DPRS wanted to spend another six months looking for a black family. An adoption supervisor said the boys would go to a group home before they would go to the Mullens.

With the assistance of the Institute for Justice, Matthew and Joseph have filed a class-action suit challenging the state's discriminatory practices. Not surprisingly, since the lawsuit was filed, DPRS claims it never discriminates and has now turned the boys over to the Mullens in a preadoptive placement. If all goes well, Matthew and Joseph will finally have a permanent home, after two-and-one-half years and lots of unnecessary foster placements. Others will not be so fortunate. Matthew, his brother, and the Mullens are only one group of victims of a long-standing pernicious race distinction in adoptions that Congress may soon overthrow.

Social workers across the country have a long-held practice of preventing the adoption of minority children by different-race parents, calling interracial adoption "cultural genocide." Since the infants and children involved don't have lobbyists, their voices go unheard as they get shuffled from foster home to foster home. Meanwhile, the social workers search for homes that will supposedly promote these children's "cultural awareness"—never mind the other ingredients, such as love and stability, that make childhood and life fulfilling.

Interracial adoption began in the United States after World War II and increased considerably in the 1960s as a result of the civil rights movement, which brought much attention to the dilemma of minority children in foster care. But in 1972, the Detroit-based National Association of Black Social Workers (NABSW), concerned about the rising rates of interracial adoption, released a statement asserting that "black children belong, physically, psychologically, and culturally in black families in order that they receive the total sense of themselves and develop a sound projection of their future." The policy was adopted by the Child Welfare League of America the following year and applied to all nonwhite children.

In 1991, NABSW reaffirmed its position that "black children belong to black parents," claiming that interracial adoptees not only lose their heritage and become prejudiced against blacks, but also are harmed because their white parents are unable to teach them the skills necessary to survive in a white, racist society. The paper states that even "the most sensitive, loving, and skilled white parent could not

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avoid doing irreparable harm to an African American child." With that, NABSW made clear that the color of a child's skin, not his or her need for love and stability, would dictate whether and where a child got a home. Today, the NABSW has modified its position, tolerating interracial adoption, but only as a last resort.

By definition, "last resort" means minority children will suffer delays or denials of adoptions where their white peers will not. There are an estimated 500,000 children in the foster care system. The Washington-based American Public Welfare Association says that 40 percent of all children awaiting placement in adoptive homes are black, though blacks represent only about 12.3 percent of the general population. Furthermore, 67 percent of families interested in adoption are white, while 31 percent are black. Despite efforts to recruit more black families—who already adopt children at a higher rate than whites—it is impossible to find enough black families to keep up with the needs of the increasing numbers of black children in foster care.

Black children tend to languish in the foster care system twice as long as white children, while white parents who would adopt them are turned away. This, despite studies and a general consensus among most child-welfare experts that the most important factor in a child's well-being is an ongoing, stable relationship with a parent figure. And every white parent turned down brings the minority foster child that much closer to never being adopted.

VIRTUALLY ALL OF THE EVIDENCE against interracial adoption is anecdotal; there is not a single scientific study that shows interracial adoption to be harmful. Rita Simon, professor of sociology at American University, and Howard Alstein, professor at the University of Maryland School of Social Work, conducted the leading longitudinal study of the impact of interracial adoption on adoptees and their families. Their 20-year multicity study of approximately 200 parents and their adopted and natural children, compiled in Simon's book *The Case for Transracial Adoption*, found that interracial adoptees do not lack self-esteem or racial identity when they grow up; and indeed in some instances are actually more comfortable with their racial identity than their peers adopted within the same race. The study also shows that children of interracial adoptions grow with the same sense of pride and develop the same family relationships as birth children raised in the same households.

Interestingly, some of the parents studied invested more time and effort teaching their children about their culture than parents of the same race did. Transracial adoption may require some extra effort, but the parents' desire to overlook race should be, in and of itself, sufficient evidence of those parents' unconditional love and capacity to parent. Simon proposes replacing race with the best interest of the child as the standard for adoption.

CONGRESS IS ALREADY MOVING IN THIS DIrection. Last year, the Multiethnic Placement Act was passed to require child-welfare agencies to "work to eliminate racial, ethnic, and national origin discrimination" in adoption placements. Unfortunately, as a result of interest-group pressure, the final version of the act, signed into law by Clinton earlier this year, permits agencies to consider racial, ethnic, and cultural background as one of a number of factors to be used to place a child in an adoptive home, leaving the social workers with the loophole they need to disguise racial discrimination. Furthermore, white couples are required by the law to undergo extensive "multicultural training" before attempting to adopt minority children.

This year, the House wants to go farther. Thanks largely to the efforts of Rep. Jim Bunning (R-Ky.), the House this year passed a new Multiethnic Placement Act, which removes all remaining barriers to interracial adoption and prohibits agencies receiving federal dollars from denying or delaying the adoption or placement of a child in a foster home based solely on the race, color, or national origin of the child or potential parents. Under Bunning's bill, states or agencies that violate this law will lose all their federal funds. Similar legislation is being championed in the Senate by John McCain (R-Ariz.), and is currently in the Senate Finance Committee.

But such federal action is not enough. The last remaining state statute banning interracial adoption was struck down as unconstitutional in 1972, but most states —up to 43—still have laws that permit the use of race by state agencies in adoption decisions, with Arkansas, California, and Minnesota *requiring* race to be a consideration. Governors, mayors, and welfare leaders at the state and local level need to overturn such laws and make interracial adoption and speedy placement a part of their legislative agenda.

Yet even an express prohibition on race matching may not be enough, as the Texas DPRS has demonstrated. Social workers will continue rejecting interracial adoption until a rule of law is established to prohibit racial discrimination in adoptions. Harvard Law professor Elizabeth Bartholet, a long-time advocate of interracial adoption and author of the 1991 *University of Pennsylvania Law Review* article "Where do Black Children Belong? The Politics of Race Matching in Adoption," notes that "[t]he problem isn't that we don't have the right federal law. The problem is that we don't have any organizations that could support the right kind of legal challenge to what's going on."

But for now, social workers around the nation continue to jeopardize the well-being of the 100,000 minority children in foster care for the sake of preserving a mythical racial or cultural purity. This is a crime against both the children and their potential parents. As the country moves to eliminate the color line from public policy, color-conscious adoption policies, particularly pernicious because of their innocent and helpless targets, ought to be the first to go. ®

Nina Shokraii is director of outreach programs at the Institute for Justice, a public interest legal foundation in Washington, D.C.

Rand the Living

By Chris Matthew Sciabarra

Letters of Ayn Rand, edited by Michael S. Berliner, New York: Penguin Dutton, 1995, 681 pages, $34.95

Ayn Rand: Her letters show a woman given to theatricality and hyperbole, fury and frustration, but one who could be empathetic and affable as well.

WARNER BROS. PICTURES INC.

On November 7, 1943, Ayn Rand issued a prophetic warning to Ruth Alexander, a prominent conservative writer and lecturer: "God save capitalism from capitalism's defenders! Nobody can defeat us now—except the Republicans." For Rand, the Republican Party had exhibited an awful penchant for political compromise: It had never seriously challenged the "collectivist premises" of the New Deal, nor had it fundamentally opposed the country's march toward statism. Ultimately, Rand thought, the GOP merely sought to slow the march toward collectivism, rather than to reverse its direction. For Rand, its betrayal of principle engendered the rise of the theocratic right, a movement that, in Rand's view, undermined the rational and moral case for capitalism.

Rand characterized the "conservative" defense of the free society as half-baked, for just as the liberals had embraced intellectual freedom while seeking to regulate economic life, the conservatives had embraced economic freedom while seeking to regulate moral life. Rand's whole approach to politics sought to transcend this dichotomy and to embrace a consistent vision of human freedom in all its incarnations. Her admonitions should be seriously considered today by those friends of liberty who rush to celebrate any recent Republican victories. For within GOP ranks, Christian conservatives have combined a rhetorical commitment to the free market with a steadfast belief in government promotion of "family values"—even if this means, among other things, state repression of alternative lifestyles, restraints on the First Amendment, opposition to abortion, and a renewed war on drugs.

Especially since the Russian-born novelist and philosopher had once counted herself among the "conservative writers," her gradual disillusionment with conservatism is one of the most important leitmotifs to be found in the *Letters of Ayn Rand*, a newly published collection of the author's correspondence from 1926, six months after her arrival in the United States, until 1981, approximately two months before her death. The book encapsulates more than five decades of ideological strife in nearly 700 pages of frank and varied exchanges. It is divided into eight primarily chronological parts, with special sections devoted to Rand's correspondence with architect Frank Lloyd Wright, author Isabel Paterson, and philosopher John Hospers. Much of the material derives from the turbulent 1940s, prior to Rand's deep immersion in the writing of her magnum opus, *Atlas Shrugged.*

Editor Michael S. Berliner has assembled correspondence that will delight—and sometimes shock—readers. Whether writing to relatives, friends, fans, critics, publishers, Hollywood producers, actors, agents, politicians, priests, industrialists, professors, teenagers, or senior citizens, Rand's language is always refreshingly candid. And the diversity of correspondence is truly astonishing, featuring letters to such people as philosopher Brand Blanshard, Cecil B. DeMille, Walt Disney, Barry Goldwater, Dashiell Hammett, Henry Hazlitt, Alexander Kerensky, Rose Wilder Lane, H.L. Mencken, Leonard Read, Ginger Rogers, Mickey Spillane, Robert Stack, and Barbara Stanwyck. There are also early letters to Nathan Blumenthal (Nathaniel Branden) and Barbara Weidman (Barbara Branden) long before their tumultuous split with Rand in 1968. Even astronaut Michael Collins shows up here—with Rand thanking him for his praise of her article on the significance of Apollo 11.

Many of these letters confirm that Ayn Rand was given to theatricality and hyperbole. For instance, in her early overtures to Frank Lloyd Wright, Rand wrote to the celebrated architect that he was "the only one among the men of this century" who had lived a life of integrity. The only one? Surely, the 20th century has been tragic, but it has not been *that* tragic.

Still, what is most startling about the collection is how well it humanizes Ayn Rand. It replaces the popular caricature—the intolerant "cultess" who had piercing eyes, a black cape, and a long, intimidating cigarette holder—with a living, breathing woman who could be furious for sure, but empathetic and affable as well. Here is Rand writing love notes to her "Cubby Sweet," husband Frank O'Connor, a man she met in 1926 on the set of *King of Kings*, of all movies. Here is Rand pontificating on her love of cats, or giving advice to the lovelorn. To her longtime friend, Marjorie Hiss, who had suffered the breakup of a relationship in 1949, she wrote: "Every person develops and learns as he grows, so it is foolish to reproach yourself for not having had eighteen years ago the knowledge which you have now. You have done the best you

could, according to your judgment of that time....If there's one thing I have learned by personal experience and by observing the people around me, it's that a person's life actually starts from about 35 on....Up to that time one merely learns and accumulates experience."

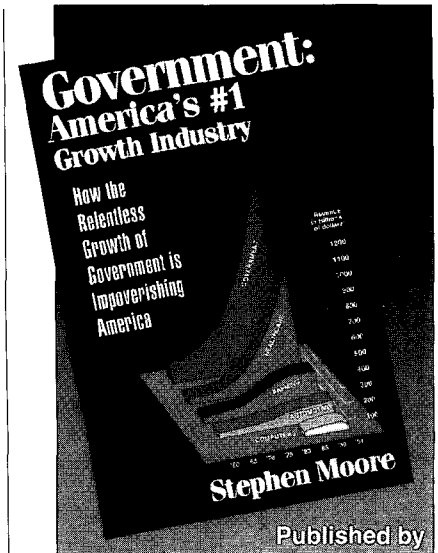
AND HERE IS RAND STRUGGLING IN "OVER crowded, vulgar, cheap and sad" Hollywood. In her early years in Tinseltown, she wrote novels and short stories while laboring at odd jobs to support herself. She never lamented the strain of working 12-hour days, and was proud to call herself "a proletarian defender of Capitalism." She sensed the hypocrisy of those in the entertainment industry—we'd call them members of the "cultural elite" today—who used their riches to support an egalitarian politics that would have wiped out the very system that made their wealth possible. "If I were a defender of Communism," she remarked with amused irony to DeWitt Emery, head of the National Small Business Men's Association, "I'd be a Hollywood millionaire-writer by now, with a swimming pool and a private orchestra to play the Internationale."

Although Rand expounded on the "virtue of selfishness," her letters suggest that her fame and fortune led to a corresponding growth in the levels of her generosity. For example, in a series of exchanges with attorneys and refugee organizations, Rand tried desperately to facilitate the immigration of Marie Strachow, a long-time family friend, who had been her first English teacher in Russia. Strachow emigrated to Austria in 1918, and lived there until after the Second World War. As a refugee, she could have faced instant deportation to Russia. With the U.S. Congress limiting the number of immigrants, Rand sent food parcels and CARE packages to her old friend, and offered to pay for Strachow's medical supplies. I found myself very absorbed—almost tense—reading this correspondence, which ends in October 1948, upon Strachow's successful immigration to America.

Letters is at its most provocative when it details Rand's growing disenchantment with the right wing in American politics. She confided in Isabel Paterson, from whom she'd learned much of the historical and economic case for capitalism, that she was disgusted with those "goddamn 'conservatives' " who had attempted to justify the free market on the "collectivist" premise that it promoted the "common good." These conservatives had not lifted a finger to defend *The Fountainhead*, a book, said Rand, that had done "more for free enterprise than the N.A.M. [National Association of Manufacturers] with their million-dollars-a-year-budget...." And in 1946, to Rose Wilder Lane, Rand admitted that she felt "sick" whenever she came "up against a compromising conservative."

Although Rand expounded on the "virtue of selfishness," her letters suggest that her fame and fortune led to a corresponding growth in her generosity. And though she was an atheist, she did not hate conservatives simply because they were religious.

She was angry that many conservatives had sanctioned various forms of corporate welfare and protectionism. For instance, instead of advocating the repeal of the Wagner Act, which had created the problem of monopoly union power, conservatives were quick to support the Taft-Hartley Act in an effort to shackle American labor. In Rand's view, conservatives, no less than liberals, had participated willingly in the growth of government power. And, as each intervention by the state engendered social problems, still more intervention was regarded as the only way to counteract the effects of previous government actions. Like Hayek, who had



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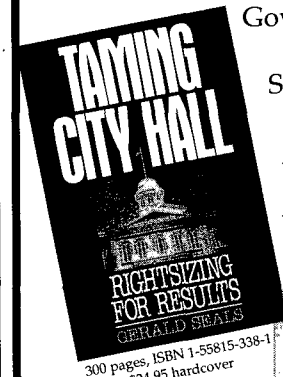

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sensed a procession down the "road to serfdom," Rand believed that the only "winner" in such a political con game was "the Bureaucrat."

FOR RAND, LABOR LAWS WERE HARDLY the only instance of conservative complicity in the expansion of statism. She was even more aghast that in their battle against communists, conservatives were demanding the death penalty for political offenses. She asserted "that the crucial steps on the road to dictatorship, the laws giving government totalitarian powers, were initiated by Republicans—such as the draft bill, or the attempt to pass a national serfdom act for compulsory labor."

Rand is at her libertarian best in such moments—opposing military conscription for sure, but also defending the rights of criminals against "liberal humanitarians" who advocated state-enforced "psychiatric therapy" that would subject prisoners to "psychological" and "physical mutilations...electric shock therapy, prefrontal lobotomies, and anything else that neurologists might discover."

In Rand's view, there was an intimate connection between personal, intellectual, political, and economic freedom. Hence she scolded Leonard Read, the founder of The Foundation for Economic Education, that it is a "great mistake" to assume "that economics is a science which can be isolated from moral, philosophical and political principles, and considered as a subject in itself, without relation to them."

While there's no doubt that Rand's opposition to conservatism was tied to her atheism, it is also true that Rand did not hate conservatives simply because they were religious. In fact, what comes through in the letters is anything but an "in-your-face" atheistic militancy. She remarks to Sylvia Austin, a fan, that, "Jesus was one of the first great teachers to proclaim the basic principle of individualism—the inviolate sanctity of man's soul, and the salvation of one's soul as one's first concern and highest goal...."

But such a principle could not be served by the Christian's altruist code of morality that demanded the sacrifice of the self for the welfare of others. This tragic internal contradiction led, in Rand's view, to continuous civil wars between sects and nations, and within each believer's soul—a civil war between the right of a person to exist for his or her own sake, and the alleged "duty" of that person to live an ostensibly "Christian" lifestyle.

In politics, today's Christian conservatives often seem to exhibit the tensions of this unresolved contradiction. They are torn between the individualist principles of Jesus and the notion that the state must make people moral. On the one hand, they sense the need for greater individual self-responsibility. But on the other hand, they would willingly undermine the individual's autonomy by seeking state enforcement of their own moral precepts. It was this conservative attempt to enforce Christian dogma that Rand condemned as an affront to liberty.

THUS, WHILE ONE WILL FIND IN RAND'S letters surprising tolerance in her intellectual exchanges with serious religious thinkers, one will also find an unabashed opposition to the linking of religion and politics. Undeniably, she opposed religious notions such as Original Sin, as well as religious figures such as Father Charles Coughlin and Bishop Fulton J. Sheen. But her most trenchant criticism is reserved for religious institutions such as the Catholic Church, which she likened to the Soviets, except that the Church sought "a form of Statism run by the Church—which simply means that [they] hope[d] for a return of the days of the Inquisition." And despite her initial support for the future Republican presidential candidate, Sen. Barry Goldwater, she warned him in 1960 that she considered the conservative attempt to integrate religion and politics a moral abomination.

Twenty years later, in one of her final letters, Rand reaffirmed that she was not a "conservative," but a "radical for capitalism." The woman who had initially befriended many on the Old Right was now telling television producer John E. Marshall that she rejected the New Right, with its anti-abortion stance and its assault on individual freedom.

In an age characterized by resurgent religious fervor on the right, Rand's letters retain relevance, especially for those of us who puzzle over the link between "free minds and free markets." While scholars such as myself would enjoy seeing all of Rand's extant correspondence in completely unedited form, this masterful collection remains required reading for anyone even remotely interested in the history of American social and political thought, as well as the future of individual liberty. ◆

Chris Matthew Sciabarra is a visiting scholar at New York University and is the author of Ayn Rand: The Russian Radical *(Penn State Press, 1995) and* Marx, Hayek, and Utopia *(SUNY Press, 1995).*

Blurred Vision

By Kenneth Silber

The Vision of the Anointed: Self-Congratulation as a Basis for Social Policy, by Thomas Sowell, New York: Basic Books, 305 pages, $25.00

WHAT IS THE POINT OF THE IDEOlogical crusades of the left? To make the world better? Not primarily, according to Thomas Sowell. The main purpose is to make members of the left feel good, and to do so by placing them in a position of apparent intellectual and moral superiority to the rest of hu-

Thomas Sowell: He paints the "anointed" as not merely self-righteous but often impervious to opposing arguments and evidence.

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manity. Leftists, in this book's terminology, are "the anointed," and their overriding goal is to distinguish themselves from "the benighted," which includes everybody else.

The "vision" of the anointed is a world view in which social problems exist because of the negligence or malevolence of the benighted—and thus can be solved by imposing the views of the enlightened few on the rest of society via government action. To believe otherwise—to view social conditions as largely outside of anyone's control and subject to innumerable tradeoffs and constraints—is repugnant to left-leaning political and intellectual elites, Sowell argues, because it robs them of the opportunity to display their superior concern and insight.

Sowell's exploration of this world view ranges broadly across social and economic topics, uncovering hidden assumptions, statistical fallacies, and verbal sleights of hand in the arguments of the left. *The Vision of the Anointed* moves from the War on Poverty, the Warren Supreme Court, and other elements of 1960s liberalism to the political correctness of recent years that insists upon gender-neutral language and denounces Mercator-projection maps as culturally biased. Sowell targets a variety of people and organizations: Ralph Nader, John Kenneth Galbraith, legal theorist Ronald Dworkin, journalist Tom Wicker, former California Chief Justice Rose Bird, the American Civil Liberties Union, the Worldwatch Institute, and the Children's Defense Fund, among others.

THE VISION OF THE ANOINTED IMPRESsively marshals facts and figures to puncture "progressive" ideas and proposals on a wide range of subjects. This is in keeping with Sowell's stated purpose to present an empirical comparison of the promised and actual consequences of policies advocated by self-anointed elites. Unfortunately, the book's argument is weakened by its relentlessly polemical tone. Sowell makes little effort to conceal the disdain he feels for his intellectual opponents, and although this makes for entertaining reading, it also demonstrates that the anointed are not alone in showering derision upon those with whom they disagree.

A senior fellow at the Hoover Institution and an economist by training, Sowell has earned a formidable reputation in several niches of intellectual life: as a staunch opponent of affirmative action and other preferential policies; as a critical observer of contemporary American law and education; and as a theoretical expositor of social and political decision-making processes, ideologies, and institutions. In *The Vision of the Anointed*, he oscillates between the concrete and the abstract, between analyzing specific programs and policies favored by the left and formulating general principles regarding how such initiatives are conceived and implemented, and why they often fail when measured against their stated objectives. What emerges is a picture of the anointed as not merely self-righteous but often impervious to opposing arguments and evidence.

Sowell traces a four-stage pattern: First, a social or economic situation is declared a "crisis" based on scant evidence. Second, policies are proposed to end the

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"crisis," and criticism of such proposals is dismissed as simplistic or dishonest. Third, the policies are enacted. Fourth, evasive arguments are used to obscure mounting evidence that the policies have not worked or indeed have been disastrously counterproductive. To demonstrate that such a pattern is characteristic of the anointed's initiatives, Sowell draws heavily upon examples from the 1960s: the antipoverty programs proposed by the Kennedy administration and initiated by the Johnson administration; the introduction of sex education into public school curricula; and the emphasis in criminal justice on "root causes" and rehabilitation.

The War on Poverty, for example, was launched at a time when the poverty rate had been in steady decline for a decade and a half—hardly the crisis proclaimed by proponents of antipoverty programs. Once the programs were implemented, the number of people in poverty declined, but then began to rise again. Moreover, the initiative's stated goal was to reduce government dependency—"to help our less fortunate citizens help themselves," in the words of President Kennedy—yet the result was a dramatic increase in dependency. Faced with such uncomfortable facts, War on Poverty proponents changed the subject, emphasizing the noble intentions of the effort or arguing that, in its absence, the situation would have been even worse.

Similarly, sex education was advocated in the late 1960s on the grounds that it was urgently needed to combat teen pregnancy and venereal disease, both of which had been in sharp decline for years. Subsequently, as sex education programs became widespread, rates of pregnancy and venereal disease among teenagers skyrocketed—perhaps not caused by sex education, but certainly not prevented by it—yet advocates continued to regard the efficacy of such programs as axiomatic. In Sowell's discussion of criminal justice, the pattern emerges yet again: Crime rates were in long-term decline prior to the 1960s, then soared as punishment was deemphasized in favor of a therapeutic approach; this troubling outcome, however, sparked little rethinking among defenders of the new approach.

A similar disregard for evidence is apparent in another phenomenon decried by Sowell: that of "Teflon prophets" and "mistaken messiahs"—thinkers on the left who maintain their reputations even as their predictions turn out wrong. Among them is environmentalist Paul Ehrlich, whose projections of resource scarcity and widespread starvation have been wildly off the mark. Another is John Kenneth Galbraith, whose *The New Industrial State* and other writings depicted large American corporations as invulnerable to market forces—just before numerous major airlines, newspapers, and retailers went bankrupt and the Big Three automakers came under unprecedented competition from Japan.

The anointed regard freedom as the ability to achieve desired goals. Unlike their opponents, the anointed strive for "cosmic justice"—a vision of fairness in which disadvantages and inequalities are eliminated by a benevolent government.

Sowell methodically dissects misleading uses of numbers that buttress the left's world view. One such practice is to allege discrimination based on statistical disparities among groups without adequately controlling for nondiscriminatory factors. Much-publicized Federal Reserve studies, for example, recently purported to show widespread racism in mortgage lending based on higher rejection rates for minority loan applicants than whites in the same income brackets, but the studies did not take into account differences between the groups in net wealth and collateral. Another statistical fallacy is to not recognize that a given series of numbers may represent a changing assortment of people. Alarmed discussions of income inequality refer to the "top 1 percent" and "bottom 20 percent" of income earners without noting that individuals move into and out of such categories all the time.

In addition to disentangling tendentious statistics, Sowell seeks to penetrate the rhetoric of the left. He denounces phrases that blur the issue of personal responsibility: Saying that people lack "access" to jobs, for example, or that there is an "epidemic" of drug abuse, implies that such things simply happen to people, regardless of their own behavior. Sowell justifiably complains about the prevalence of buzzwords, such as *crisis* and *greed*, aimed at preempting issues rather than debating them. (He undermines this point, however, by using his own preferred buzzword—*anointed*—on virtually every page of this book, long after the term's sarcastic power has dissipated.)

THE VISION OF THE ANOINTED TOUCHES upon many themes familiar to readers of Sowell's previous books, articles, and columns. Indeed, much of the material here will be overly familiar to longtime readers of Sowell's work, particularly his wide-ranging treatises *Knowledge and Decisions* and *A Conflict of Visions*.

As in *Knowledge and Decisions*, Sowell emphasizes that human knowledge consists largely of the unarticulated experiences of numerous people, not the formal learning of an articulate elite; hence, market processes that convey the ideas and preferences of the many are superior to grandiose social-policy schemes that rely on the talents and wisdom of the few. A related theme is the importance of incremental, rather than categorical, decision making: The crucial question, often ignored in policy debates, is not whether something is good but how much of it is desirable and affordable. *The Vision of the Anointed* also recapitulates Sowell's argument, stated at length in *A Conflict of Visions*, that underlying many policy disputes are differing assumptions, largely

unspoken, about humanity's moral and intellectual capabilities and the range of social possibilities.

Amplifying these themes, Sowell contrasts the anointed's world view with the opposing "tragic vision," which emphasizes the inherent limitations of humanity and society. Where the anointed see categorical solutions to social problems, the tragic vision recognizes that unavoidable trade-offs will leave many desirable objectives unmet. While the anointed regard freedom as the ability to achieve goals, the tragic vision more modestly defines freedom as the absence of coercion. The anointed, unlike their opponents, strive for "cosmic justice"—a vision of perfect fairness, in which disadvantages and inequalities are eliminated by the actions of a benevolent government.

A common habit of the anointed, Sowell writes, is to treat various elements of society as "mascots" or "targets." Groups that are distrusted or disliked by the general public—such as criminals, vagrants, and disease carriers—are adopted by the left as pet causes; by extending their concern to the "less fortunate," the anointed differentiate themselves from the benighted public. Meanwhile, other groups are targeted by the anointed, precisely because they are held in generally high esteem; successful business people and professionals are among such targets, and hence the anointed favor expansive liability laws that make companies and doctors highly vulnerable to lawsuits.

When Sowell shifts his focus away from consummated policies and toward ongoing controversies, the unintended effect is to highlight the left's current lack of power and relevance. The recent crusade against Mercator-projection maps is a case in point. Such maps, which make countries near the equator look smaller than those near the poles, have been denounced by the National Council of Churches and other groups as an example of Eurocentric bias against the Third World. Sowell points out, correctly, that the Mercator projection has long proven useful for navigation and other purposes and that alternative types of maps distort the globe in different ways. The deeper point, however, is that the anointed are spending their time on such arcana precisely because they are no longer busy restructuring society.

Indeed, *The Vision of the Anointed* strikes an unduly pessimistic note. Sowell describes the anointed's world view as the "prevailing" vision of our time: widely accepted among political and intellectual elites, and influential enough to have colored even the views of its opponents. With each passing decade, he claims, the anointed's vision will become even more pervasive and insular, as precedents accumulate for their proposals and policies.

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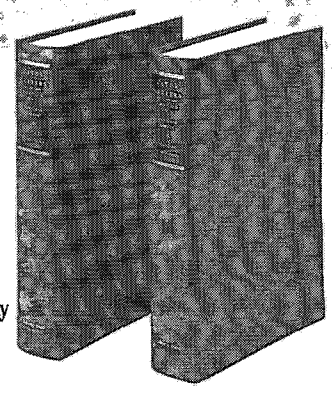

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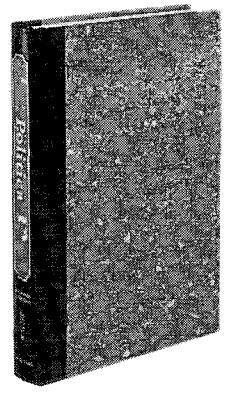

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But at a moment when the left is on the ropes politically and intellectually, Sowell's depiction of its self-deluded thinkers and policy makers inflicting broad harm upon society seems oddly anachronistic.

In that sense, *The Vision of the Anointed*, with its emphasis on controversies from the 1960s, overlooks the changing nature of the left. Increasingly, the focus of "progressive" energies is not on elaborate policy analysis but rather on obscure, intellectualized, free-floating hostility toward existing institutions. Instead of planning a new War on Poverty, the left seems eager to retreat into various realms of esoterica, including deconstructionism, multiculturalism, and the "politics of meaning." *The Vision of the Anointed*'s portrayal of a rationalistic elite infatuated with social engineering is a more compelling vision of the anointed's past than of their present or future. ®

Kenneth Silber (ksilberny@aol.com) writes about politics and economics for Insight *and other publications.*

Richard Epstein: In the wrong hands—say legislators or judges—his latest book could make *Takings* look positively soft-core.

Keep It Simple, Solons

By Michael McMenamin

Simple Rules for a Complex World, by Richard Epstein, Cambridge: Harvard University Press, 361 pages, $35.00

You remember Richard Epstein. He's the guy who wrote *Takings*, the book on compensation for government regulation of private property that Sen. Joseph Biden held up for the cameras during Clarence Thomas's confirmation hearings for the Supreme Court. Biden made it clear that Thomas's having read or, worse yet, having been swayed by that scandalous tome would have done more to disqualify him in Biden's eyes than being the consumer of hard-core pornography implicit in Anita Hill's testimony.

Biden was right. If Thomas has been influenced by Epstein—and some of his decisions on the High Court are eloquent evidence that he has been—then Biden and all other regulatory liberals are in for a tough 30 years (roughly how long Thomas intends to serve on the Supreme Court). Epstein's new book, *Simple Rules for a Complex World*, will give them even more cause to be afraid. Very afraid.

Epstein literally wants a revolution in the American legal system, turning it away from its heavy emphasis on government regulation as the solution for most social ills. He advocates a return to a simplified and modified version of the common law—judicial decisions applying "a set of simple rules capable of handling the most complex set of social relations imaginable, whether in the United States or anywhere else." In the wrong hands—say legislators or judges—this book could make *Takings* look positively soft-core.

Here's where Epstein comes from: "[I] think that permanence and stability are the cardinal virtues of the legal rules that make private innovation and public progress possible. To my mind there is no doubt that a legal regime that embraces private property and freedom of contract is the only one that in practice can offer that permanence and stability....

"In reaching this conclusion, I have been heavily influenced by the work of Friedrich Hayek....Hayek's major target was central planning...the question of whether government officials could ever acquire the information routinely imparted by prices to organize product and labor markets. Today there is little general sentiment...in favor of the collective ownership of the means of production....Instead the newer pattern is to preach the virtue of markets in the abstract, and then to insist that government regulation of private enterprises is necessary to correct the legion of supposed market failures that arise in complex market institutions....

"[T]his book [i]s a reply to the argument that regulation is normally desirable even in circumstances where government ownership of the means of production is not. In my view, there is no sharp dichotomy between government regulation of wages and prices, on the one hand, and government ownership, on the other. Rather, regulation takes certain elements from the owner's bundle of rights and transfers them to the state, where they again fall prey to the same difficulties that arose when central planning was defended on a grand scale. If the downfall of socialism comes from the inherent gaps in information available to public officials and from the inability of legal rules to constrain their self-interested behavior, the forms of modern regulation attacked in this book are subject to the same criticism."

"Too Many Lawyers, Too Much Law" is the title of the first chapter, and it's all downhill for lawyers and regulatory liberals after that. Epstein cites

R. TONNELL

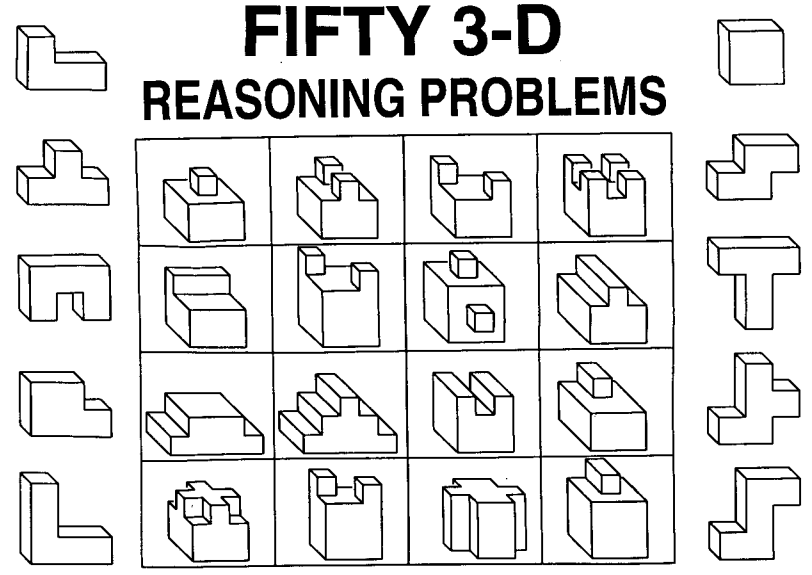
a recent study to the effect that each additional lawyer reduces U.S. gross domestic product by $2.5 million, and that the optimal concentration of lawyers in the United States is 60 percent of today's level. Epstein has some ideas on how to get rid of the need for some of these lawyers—his "simple rules" which, properly applied, could form a powerful analytical tool for legislatures to apply to new and old laws alike. There will still be lawyers after Epstein is through—you didn't think you could get rid of us that easily, did you?—but they will be more productively employed. Under Epstein's preferred legal regime, we would see no more technicians who spend their time becoming experts on the Internal Revenue Code, environmental regulations, or the Fair Labor

Epstein cites a recent study to the effect that each additional lawyer reduces U.S. gross domestic product by $2.5 million, and that the optimal concentration of lawyers in the United States is 60 percent of today's level.

Standards Act, to name just a few of the more uncreative ways lawyers today waste their time and their clients' money.

Epstein's first two rules set the stage for all that follows. The first is individual self-ownership. The second is the right to own property and defines how rights in property are acquired. As Epstein says:

"My first two rules [would do] a good deal to create order in the legal landscape. The first rule gives people control of their own lives; the second assigns each external thing an owner....[T]he common law rules of personal autonomy and individual ownership necessarily decentralize control of both human and material resources. No single person, no select group of individuals, can decide who is going to own



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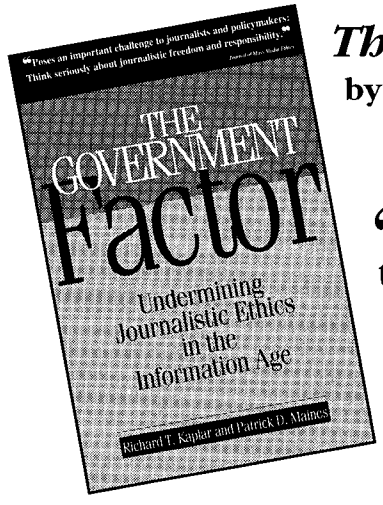
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what things or who is entitled to deal with whom on the transfer and use of labor or talents."

The next two rules are the freedom to make and enforce contracts and the right to protect the things you own from harm by third parties. When combined with the first two, they "establish what some might call a libertarian synthesis. They describe a world with strong and well-defined rights in persons and property, complete freedom of exchange and powerful protection against external threats."

Epstein recognizes, however, that the first four rules won't solve every legal problem. He creates a fifth rule to apply where two parties, each with certain rights, are thrown together in unavoidable situations not covered by a contract and one side is in a position to indefinitely hold out against the weaker side—if you strictly adhere to the first four rules. Epstein calls it the rule of "Necessity, Coordination and Just Compensation."

It covers a lot of territory, is the least simple of all the rules, and is probably the most difficult for the lay reader to understand. For example, "there are some situational monopolies that the law does not create, and whose occurrence it cannot prevent. In those circumstances—which first arose in cases of necessity—controlling aggression is but one side of the coin. The other side of the coin is the problem of coordination when one party is in a position to hold out the other for a huge portion of the potential gains from any contract. Here the task is to minimize the total distortions from two problems that often work at cross purposes with each other."

See what I mean? Epstein applies the rule to theoretical problems involving dying of thirst in a desert and joint ownership by mistake and to everyday problems like divorce, compelling specific performance of a contract, injunctions to protect against anticipated or threatened harm, and conspiracies against competition. I think he tries to do too much—any rule that can handle all that is not simple.

Take necessity—if I'm dying of thirst and you have water, this rule says I can refuse to pay the outrageous price you demand (even if I can afford it) and simply take the water. In turn, you cannot use force to keep me from your water and all the law will give you is "just compensation" from me for the water I took, i.e. the market price. Epstein distinguishes this situation—a bilateral monopoly where nobody but me is dying of thirst and I can get water nowhere else—from other cases of necessity like natural disasters where some merchants take advantage of shortages to gouge victims. There is no monopoly and the market—voluntary exchange—will quickly reassert itself.

Unlike legislatures, the judiciary is essentially passive. Judges can't wake up in the morning and decide to change the law unless a pending case permits them to do so. Even then, they are subject to review by appellate courts.

Just compensation and bilateral monopolies are the keys here. There are bound to be many occasions where two parties have conflicting interests and a court is going to have to resolve them by balancing the competing interests, like divorce. By consent of both or at the choice of either? Epstein says neither and proposes "a system where the divorce takes place as of right, upon payment of just compensation for the release—alimony and support."

The sixth rule is directed at compensation for the harmful effects of government regulation:

"The current law fails to limit the use of government regulation under the principle of take and pay. A new start is needed, one that does not have as its mission preserving from constitutional attack as much of the regulatory state as possible....[T]he ONLY correct position is to recognize that ALL forms of regulation are subject to scrutiny under the takings clause. By design this position is meant to subject every form of government restriction to constitutional scrutiny....Any form of regulation thus requires compensation in cash for the losses inflicted (1) unless the regulation is necessary to prevent the kinds of losses that neighbors could enjoin under ordinary tort law principles... or (2) unless some compensation in kind is furnished to the party whose property is taken."

In the second half of his book, Epstein applies these simple rules to employment law, compulsory collective bargaining, employment discrimination, affirmative action (all taken care of by rules one and three), product liability, securities law, insider trading (rules three and four), and environmental protection (rules two, four, and six).

I WON'T GO INTO DETAIL ON ALL OF THE practical applications of his rules, but their overall impact in all the areas listed above would be to reduce litigation. Reduce, but not eliminate. Other areas would probably see *more* litigation: defamation suits against the media, for example, where truth would be the only defense, not to mention the many suits against all levels of government whose regulations had diminished the value of private property.

The book would have its greatest immediate impact if legislatures would heed the lessons of the simple rules. From Epstein's first principle of government action, "Do no direct harm," to the rules themselves, performing a "Simple-Rules Analysis" (or an "Epstein Analysis") on proposed legislation should be the initial reaction of any thoughtful legislator contemplating a new law herself or confronted with a colleague's proposal.

As for regulatory liberals, they better hope that Newt Gingrich is too busy with his book tour or writing the sequel to his novel and Dick Armey too distracted with the burdens of replacing the tax code to read this book. A simple-rules analysis works just as well on existing legislation

as on proposed.

The book's possible impact on the judiciary would not be as direct or immediate. Despite the activism of some judges, the judiciary is essentially passive in a way legislatures are not: Judges can only decide cases which come before them. They can't wake up in the morning and decide to change the law unless they happen to have a pending case that permits them to do so. Even then, they are subject to review by appellate courts. Moreover, unless they can find constitutional grounds to do so, they have to enforce the laws legislatures have passed—ill-conceived or not. Nevertheless, in the right case in the hands of a good lawyer, a simple-rules analysis will be a powerful weapon.

Epstein does not pretend that his simple rules address all of the legal issues confronting society, including those involving health care, church and state, education, and the military. The book features "nothing, in short about many of the issues that dominate political discourse today," Epstein says. Nevertheless, like the five lawyers at the bottom of the sea on the first page of Epstein's book, it's a good start.

BUT DON'T WORRY ABOUT US LAWYERS. It's still a complex world out there and you're still going to need us to apply these simple rules on your behalf the next time you're in a jam, for example if one of your competitors hires away your best employee despite a non-compete clause she signed. Or your neighbor decides that a backyard smelter won't really harm neighborhood values. Or your employer reneges on that bonus he promised, which lured you to move half way across the country. Or a local judge sues your television station for libel for filming him at a bar when he should have been on the bench. Or the person you bought your new home from lied when you inquired about roof leaks. Or you're sued for an automobile accident which really wasn't your fault at all, not at all. We believe you. You've been wronged. You deserve justice. And after you've purchased our allegiance in the form of an appropriate retainer, we'll represent you. Just like we always have.

Oh, by the way: Epstein hopes his simple rules will reduce our ranks by some 40 percent to reach our optimum number. That means there will be greater demand for those of us still left in the profession. So you may notice an ever-so-slight upward adjustment in our normal, customary, and ever-so-reasonable fees. See rules one and three.

Contributing Editor Michael McMenamin is a lawyer in Cleveland.

Cyberspace Cadet

By Steven Hayward

What Comes Next: The End of Big Government—And the New Paradigm Ahead, by James P. Pinkerton, New York: Hyperion, $21.95, 386 pages

JIM PINKERTON ENDEARED HIMSELF TO right-thinking people a few years back by annoying Richard Darman, the Rasputin of the Bush administration. Pinkerton's advocacy of the "new paradigm" embarrassed the Bush administration by exposing its blindness toward historic political opportunities. Even more egregious by Washington standards, Pinkerton's themes pricked the intellectual vanity of the Darmans and Sununus of the Republican establishment, who always tremble at the idea of straying from the line-of-sight of the conventional wisdom

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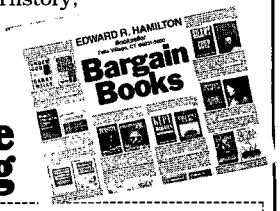

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James Pinkerton: His "new paradigm" provides the cyberthink for a third-party presidential candidate, possibly Colin Powell.

of *The Washington Post* or *New York Times*.

Upon reading *What Comes Next*, however, Pinkerton's admirers may wonder whether he didn't pick up some mild mutant strain of the Darman disease. While Pinkerton offers a clear-eyed and vividly illustrated account of the failure of big government in our time, his "new paradigm" for the future contains inexplicable nods toward the direction of frothy do-goodism, including a few downright statist ideas such as a revived Civilian Conservation Corps government jobs program. It would be a mistake, though, to judge *What Comes Next* as a wonkish tome. Pinkerton is up to something more mischievous than mere policy prescriptions. *What Comes Next* is really intended to be a manifesto for a third-party candidacy for president, probably by Colin Powell, though Pinkerton barely mentions Powell in his narrative.

What Comes Next lays out five clear themes in the sprightly prose that readers of Pinkerton's newspaper columns have come to relish. After opening the book with a brief memoir explaining the myopia of the Bush administration (comparing it to the old movie *The Big Sleep*), Pinkerton discusses the two-edged sword of the "cyber future." Technology holds out great promise, but many are likely to be left behind—"fiscally challenged, expectationally diminished neo-deadheads" he calls them. "We are disuniting into a society of program traders, Think Pads, and the Internet at one extreme—and crack, Uzis, and three-strikes-you're-out on the other....[W]e can e-mail across the planet but are afraid to cross the street."

PINKERTON USES CYBERTHINK TO CONstruct his second main point, which is to explain the failure of the "old paradigm" of big government with the metaphor of a computer operating system. In this case, big government has operated on BOS—Bureaucratic Operating System—for several generations, including several upgrades. The Great Society of the 1960s represented the last major system upgrade (Pinkerton calls it AMERICRAT 5.0), but even by then the old BOS was becoming obsolete.

From this paradigmatic and cyberspeak vocabulary, Pinkerton's narrative turns in a more conventional direction, explaining the decisive turning points in American politics—what the political scientists call "realignments"—as "Big Offers." Politicians who make the voters a credible and audacious "Big Offer" of something new create the outline of the new paradigm for succeeding generations. The last few years have seen two attempts at making a Big Offer from both Reagan and Clinton; both failed because their Big Offers weren't broad or big enough. Reagan's Big Offer failed because it didn't go beyond tax cuts, and Clinton's Big Offer—health care—failed because it was a flawed attempt to offer a new upgrade on the obsolete BOS.

There have been three Big Offers in American history, Pinkerton argues: the Founding itself, the rise of the Republican Party under Lincoln, and of course the paradigmatic realignment (to use Pinkerton's lingo), the New Deal under FDR. One notes that all of these Big Offers occurred during—and can be said to have succeeded only because of—a time of extreme crisis. It is not clear that a crisis of similar magnitude exists today.

The real parallel of our time is not to a regime-shaking crisis such as occurred in 1787, 1860, and 1932, but rather the Progressive Era. The rise of large-scale industry in the late 19th and early 20th century had profound effects on our politics and on the character of the two political parties, but it did not represent a fundamental crisis of the American regime, and the populist impulse of the time led neither to a new party nor a realignment between the parties. And yet, it did lead to a fundamental change in the character of the American republic—the rise of the regulatory/welfare state. The changes the Progressive Era wrought in our politics were accomplished without a discernible Big Offer. Today the information revolution is succeeding the industrial/managerial revolution of a century ago, and it is just as possible to spin a scenario in which both parties adapt without a Big Offer, and without a realignment, just as they did 100 years ago.

Indeed, many of the early deregulations of the past generation have proceeded on a bipartisan basis, just as the regulatory revolution of the Progressive Era was a bipartisan affair. The Democratic Party is likely to figure out sooner rather than later that it faces extinction if it doesn't get on the bandwagon. The glaring exception of the Progressive Era makes Pinkerton's paradigmspeak look a bit confining and gimmicky. This is where Pinkerton's model—a simpler word for "paradigm"—loses its clarity.

THE TROUBLE WITH PINKERTON'S MODEL begins to appear more clearly in his analysis of Reagan's "lost Offer," which he says "is a lesson about what happens to politicians when they fail to develop a plan that meets the public's desire for a communitarian whole-souledness in addition to individual well-being." It is a mistake to dismiss communitarian sentiments out of hand, but the idea of communitarianism is mostly mischievous in American discourse today. Communitarianism is fast becoming the last refuge for the regulatory state, as the free market cri-

JERRY BAUER

tique of big government has swept the ground from under the older economic justification for expansive government.

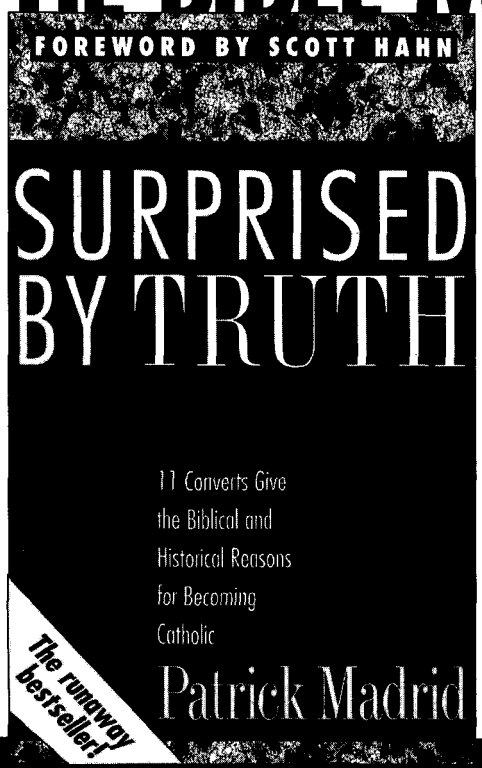
Pinkerton argues that "[n]either party has the intellectual or moral stature to make a Big Offer to the voters." He thinks the time is ripe for a third party to gain a huge mandate from the American people to sweep away the old BOS paradigm with a new paradigm based on four themes: personal security, personal responsibility, value of the family, and a sense of community. Pinkerton offers strong arguments in favor of school choice, a flat tax, a crackdown on crime, medical savings accounts, abolishing Davis-Bacon, and... well, the kind of things that House Republicans have been thumping for quite some time now. But Pinkerton suggests a fusion of issues with a decidedly statist tilt as well, including a revival of a New Deal-style jobs program like the Civilian Conservation Corps ("I was convinced it would work in the nineties," Pinkerton writes early in the book, "because its principles—rigor and reciprocity—were timeless"), a progressive consumption tax, and the creation of an elite corps of "Samurai bureaucrats" whose main function is "to raise the prestige of government service."

The last is the most bitter pill to swallow from Pinkerton's cyberstew: The rising public contempt for government is one of the best bulwarks for liberty in our time, and we should do nothing to help redeem the public image of government. Moreover, Pinkerton and other "reinventing government" enthusiasts need to decide whether the task most needful is "reinventing" government, or "deinventing" government. He rightly blasts Vice President Gore's "rego" project for being a half-hearted public relations deception, but Pinkerton appears vulnerable to the criticism that he shares Gore's agenda of preserving and enhancing the effectiveness of the administrative state, when it should simply be smashed.

Pinkerton thinks the fusion of these contrasting policies will "unify Left and Right, radicals and conservatives, in a new Alliance that bypasses the failed policies of the past." Pinkerton may be right that such a fusion might have broad appeal—recent polls report a large majority of Americans, over 60 percent, in favor of a new political party that would purportedly represent the angry, radical middle—but he underestimates how much of a stake the left especially has in failed policies of the present.

"Who will make a Big Offer based on these issues?" Pinkerton asks enigmatically. He recently trashed Ross Perot in one of his newspaper columns. His narrative in the book briefly breezes past Jack Kemp into a discussion of race, hence suggesting the idea of Colin Powell (perhaps a Powell-Kemp independent tick-

THE BIBLE MADE THEM DO IT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et?), though he is careful not to mention Powell right here.

In the last pages of the book, in his discussion of the jobs program, Pinkerton is less coy. A New Paradigm leader might ask Powell to run the jobs program, he says, but "if Powell were engaged in something even bigger," why General Schwarzkopf would do just fine. Pinkerton had earlier described this book as "an open letter to anyone—Democrat, Republican, or other—who thinks that things can't continue." It also looks a bit like a résumé to become guru to a Powell campaign to me. Will we see "The Powell Paradigm" bumper stickers?

The rising public contempt for government is one of the best bulwarks for liberty in our time. Pinkerton and other "reinventing government" enthusiasts need to decide if they prefer "reinventing government" or "deinventing government."

BUT BEYOND THIS SEASON AND WHATEVER strange motives my imagination may have attributed to Pinkerton's purpose here, readers need to ponder whether there isn't a bit too much triumphalism in our present cyber-enthusiasm. The idea of the "new paradigm," as we know, was borrowed from Thomas Kuhn's famous book about the history of science, *The Structure of Scientific Revolutions*. But while every new paradigm in science has meant an advance in knowledge and understanding, it is not necessarily the same in politics.

And of course, the problem with paradigms is that they do your thinking for you, and Pinkerton appears to be letting his fascination with paradigm analysis drive too much of this thinking. Most of what is best about the so-called new paradigm comes in fact from the "old paradigm" of classical liberalism. The change of rhetorical clothing may be useful as a heuristic device, but it is important at some point to be clear that we are not really reinventing liberty, but rather recovering its ancient basis through new forms of organization made possible by the blessings of technology.

Contributing Editor Steven Hayward (hayward487@aol.com) is research and editorial director for the Pacific Research Institute, a San Francisco–based think tank.

Brief Review

A Crooked Man, by Christopher Lehmann-Haupt, New York: Simon & Schuster, 351 pages, $23.00

IN 1991 *NEW YORK TIMES* BOOK REviewer Christopher Lehmann-Haupt panned Richard Lawrence Miller's *The Case for Legalizing Drugs*. Miller, he said, "gives aid and comfort to his enemies. What he has written amounts to as good a case *against* drug legalization as they could have made themselves." This is unfortunate, Lehmann-Haupt said, because "the growing debate over drug legalization is a serious one, with much confusion surrounding the issues and many compelling arguments on either side."

It seems that Lehmann-Haupt has been considering those arguments for a while. The protagonist of his new suspense novel is a Republican senator from Pennsylvania who introduces a bill to legalize drugs. The pro-legalization arguments that appear in *A Crooked Man* are too sketchy to satisfy opponents of the war on drugs, let alone persuade the skeptical. But the main purpose of the book is presumably to entertain, and in that respect it succeeds. In any case, it is encouraging to see that the topic of drug legalization is by now familiar enough to be relegated to a plot device.

Grief-stricken and separated from his wife in the wake of his teenage daughter's drug-related death, Sen. Nicholas Stationer Schlafer III does not expect his bill

will succeed, but he hopes at least to get it to the Senate floor and generate some serious debate. But strange things start to happen, as they usually do in this sort of book. Responding to mysterious pressures, senators who had promised to support the measure start reneging. Schlafer receives several oblique threats, which become more menacing as he investigates the circumstances of his daughter's death.

Schlafer, we are told early on, is a libertarian: "What mattered most to him was that he considered drug legalization a cornerstone of the libertarian political philosophy on which he had run for office and gotten himself elected. If ever there was a case where free-market forces would work to the benefit of people! Just liberate the supply and demand of hard drugs and the price of them would drop like a shot duck, and all the need for crime and violence would disappear."

But aside from this passage and Schlafer's opposition to a Democratic president's big-spending budget, there is no indication of his "libertarian political philosophy." Indeed, in the very next paragraph, we see him conceding that "the state would have to control the supply and channel the profits into educating the public *against* the use of drugs." Opponents of drug prohibition frequently say this kind of thing, but it is hardly a distinctively libertarian position. Talking to a black congressman who strongly opposes legalization, Schlafer says, "It's not really the free market I'm concerned with." But I thought....

It is encouraging to see that the topic of drug legalization is by now familiar enough to be relegated to a plot device.

Later, Schlafer meets with a gangster, Lenny Scordia, who claims to like the senator's bill because he wants to go legit and sell drugs legally. Scordia, who shows a surprising interest in libertarian theory, mentions Robert Nozick's *Anarchy, State, and Utopia*. Schlafer has never heard of Nozick or the book.

Unconvincing as Schlafer's alleged libertarianism is, the rest of *A Crooked Man* is credible enough to keep the reader's disbelief suspended most of the time. Lehmann-Haupt tells an absorbing, satisfying story, with the requisite twists and turns. And yes, I did stay up until the wee hours of the morning to finish it, but it was a weekend, and I was having trouble sleeping. Unless you are champing at the bit to read a mainstream novel that mentions both drug legalization and "the night-watchman state," you should probably wait for the paperback.

—Jacob Sullum

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Rates of Kahn

By Thomas W. Hazlett

All Aboard Air Al!

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This happens to me all the time, by the way. Despite the psychological trauma of such torturous in-flight conditions, it turns out that Southwest has such convenient flights that I can't afford the luxury of shopping for more humane conditions. It really pains me, you know, to do this—but I've got to be in San Diego by 4 p.m. and I can't possibly leave before two o'clock. Dial 1-800-IFLYSWA.

Despite my personal torment, I can see the bigger picture. In San Diego, for instance. While awaiting a return flight to Sacramento last June, I began staring at the folks crowded around the Southwest terminal at Lindbergh Field. Not your normal business traveling bunch. No sir. These were the folks who couldn't raise Greyhound fare: families, the very young, the very old, guys who thought about driving the 500 miles but couldn't afford a big enough cooler for the beer.

And I suddenly felt warm for Alfred Kahn. Author of the preeminent textbook on economic regulation and professor emeritus from Cornell, Kahn served his country with distinction as chairman of the Civil Aeronautics Board. Most distinctly, as the *last* chairman of the CAB.

Professor Kahn came to Washington during the Carter administration and rearranged the federal agency that regulated the nation's interstate airlines. He saw that CAB's safety functions could be shipped over to the National Transportation Safety Administration and that the allocation of take-off and landing slots could be done by the Federal Aviation Administration. What CAB held onto was the ability to regulate (read: limit) competition. And then Chairman Kahn shut it down.

I doubt if many of the $79 (unrestricted) fares flying Southwest from San Diego last June paid Professor Kahn much attention, but it would have been entirely appropriate if they had hoisted a beer in his honor. His policy spade work allowed upstarts like Southwest to challenge established firms and drive prices down. Economists inform us that consumer savings since air deregulation have been in the billions and billions, but not even Carl Sagan seems much impressed. Indeed, I suspect that Professor Kahn flies under an assumed name, because most of what the industry has to say about the enhanced competition wrought by CAB abolition would make even that 300-lb. trucker sitting to my left wince.

The connection between those who harvest the fruits of successful public policy and those who laboriously—and bravely—tend the garden is tenuous. In a just, not to mention more efficient, world, Alfred Kahn would get a kopek for each transaction he makes easier, each family reunion his transportational reforms make possible.

Moreover, those who, unlike Mr. Kahn, come to Washington and really foul up do not seem to suffer. Just the reverse. As when a champion of some ill-thought intervention into the U.S. economy cleans up as an expert consultant—there's always healthy demand for help in dealing with a *very* bad law.

The disconnect between individual action and public policy success underlies so much of the mess we're in. I recently read an editorial in my learned local newspaper, the *Sacramento Bee*, roundly denouncing the undeserved antitrust exemption finagled lo these many years by Major League Baseball. They cited the horrors that such coddling had created—including the ugly, disloyal treatment of cities, with franchises moving cross-country at the drop of a municipal stadium subsidy.

The great irony is that baseball, *because* of its antitrust exemption, has not been the offender. When the National Football League, for instance, did try to block the Raiders from jumping to Los Angeles from Oakland in 1983, the league lost a $33 million verdict on *antitrust grounds*. Now, football teams hop around to new cities almost as fast as their tailors can produce new uniforms: Los Angeles lost both its franchises this year (the Raiders back to Oakland, the Rams to St. Louis). The NFL—or the NBA—is helpless to stop individual franchises from playing cities against each other; it would be an illegal restraint of trade!

It's complicated charting policy effects as they dribble out into the real world. Which is why when one guy figures it out and does the right thing, like our pal Alfred Kahn, I think we ought to do something special. Treating him like just another smart scholar doesn't get there. Awarding him a lifetime No. 1 pass on Southwest might do the trick. ®

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

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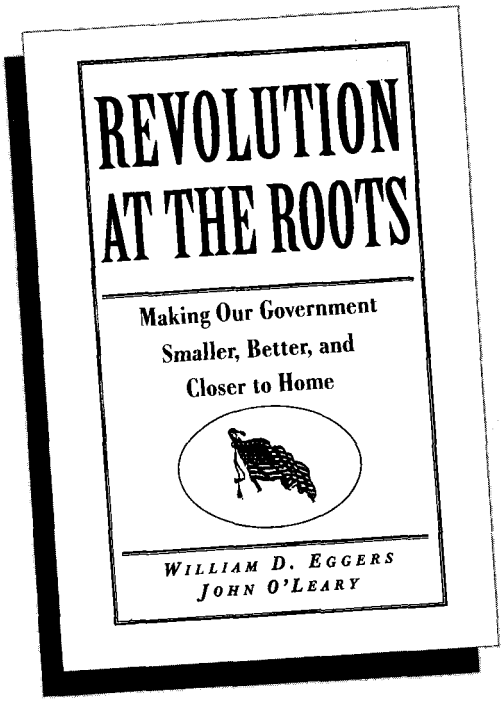

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